Diverging Paths?

The Shapes of Power and Institutions in Medieval Christendom and Islam

Edited by

John Hudson
Ana Rodríguez

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Diverging Paths?

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Preface

The present volume began with discussions of an important and straightforward question, to which the answers must be very complex: "why did certain sorts of institutionalisation and institutional continuity characterise government and society in Christendom by the later Middle Ages, but not the Islamic world, whereas the reverse end-point might have been predicted on the basis of the early medieval situation?" This core question situates the investigation within classic historiographical debates. For example, is it correct to see Islamic society as dominated by orality? How can this view be reconciled with the considerable evidence for the use of documents? At the same time, the core question relates to matters of strong contemporary interest, for example the perceived characteristics of power exercised within Islamic Middle Eastern regimes.

The volume derives from a collaborative project, examining a group of questions in comparative fashion on the basis of the participants' own research.[1] Such collaboration and such an approach seeks to break down divisions internal to the historical discipline, divisions that have reinforced the definition of western and eastern cultural areas according to a number of criteria, among which religion is especially prominent. Taking-for-granted of these contained cultural areas has favoured the formation of closed scholarly communities with little or no contact. The gathering of a group of scholars therefore allows not merely geographical, chronological, and cultural comparison, but also that of historiographical traditions.

In addressing the core question, the volume aims to produce a number of preliminary interpretative answers, to which an integrated approach is central. The inclusion of the Byzantine Empire is crucial as the project attempts to avoid the simple comparison of Islam vs. Christendom, a comparison in danger of invoking assumptions of essentialist differences between civilisations. The essays reveal that even though the whole Mediterranean basin shared a common classical legacy, institutions acquired divergent configurations in different areas and periods. However, formal or non-formal institutions cannot be equated with, respectively, efficient or non-efficient institutions, and the emphasis is not on problems of institutional failure or efficiency but rather on questions of institutional diversity. The aim of the participants is to ascertain

1 The 'Diverging Paths' project gathered regularly in the HCCSH-CSIC in Madrid from 2009 to 2011 thanks to funding from the Spanish Ministerio de Ciencia y Tecnologia.

the institutional responses to common necessities of political and social control and regulation. This approach may illuminate not only essential institutional diversities, but also unexpected similarities. Different processes of comparison are developed through the book: parallel thematic analysis, for example of codification; parallel cases studies; comparison within individual papers; and throughout by consideration of a common set of questions and variables, analysed in relation to different regions, periods, institutions, and materials.[2]

To allow comparative exploration, three main areas of study were chosen. The first, law, has long been central to institutional history and remains highly fertile. The period under consideration is an essential one in the divergence of legal development within the regions studied, with the re-emergence of Roman Law, the beginning of the English Common Law tradition, and significant developments in Islamic Law. Institutionalisation through codification and professionalisation is a central topic, together with the relationship of law to other forms of specialist learning, particularly religious. The second area, the funding of ruling powers, also has a long tradition of institutional study. However, the approach taken here is deliberately distanced from the older constitutional tradition, concentrating instead on the relationship of the funding of regimes, their changing institutional nature, and the development and exploitation of the economy. Issues of property law, taxation, and monetisation are therefore central, whilst divisions between economic, political, and administrative history are necessarily broken down. In particular, aspects of the exploitation of resources in the Islamic world are examined in papers that might seem to bring them closer to those manifest in areas of Christendom or to distance them from Christendom; the intricacies of comparison, divergence and convergence are thereby emphasized. The third area, palaces and places, is particularly useful for examining how new institutions grew up, and the relationship of this issue to that of regulation, particularly apparent in the development of western monasticism. Furthermore, palaces provide a test case for

2 Note also e.g. C. Wickham, *Framing the Early Middle Ages* (Oxford: Oxford University Press, 2005); id., "The Early Middle Ages and National Identity," in *Die Deutung der mittelalterlichen Gesellschaft in der Moderne*, ed. N. Fryde et al. (Göttingen: Vandenhoeck and Ruprecht, 2006): 107–122; R. Bartlett, *The Making of Europe* (Princeton: Princeton University Press, 1994). Cf. the analysis of case studies through "contextual contrasts" as keys for the understanding and definition of models, particularly common among historical sociologists; e.g. J. Burbank and F. Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton: Princeton University Press, 2010).

the exertion and exemplification of a regime's power both in the presence and the absence of the ruler.

The three areas were deliberately integrated in their matter, for example concerning specialist knowledge, communication, and exclusion of dissent. Analytical questions and themes recur. The issue of periodisation, of different chronologies in different aspects, and of varying speed of change at different times, all have to be inter-related with the issues of uniformity and divergence within the three geographical and cultural areas, Islam, Byzantium, and Western Christendom. A further central issue is that of continuity and self-reproduction. Much enquiry therefore focuses on institutional identity and memory, and their relationship to orality, literacy, the technologies of record-keeping and bureaucracy. Differences of evidence production and survival are part of the area of investigation, and part of the answer, rather than simply a matter of "sources."

Issues of power, both individual and collective, are also raised. Institutions had a role in the reproduction of social organisation and in determining processes, degrees, and velocities of social mobility, for example through specialist knowledge and through control of office. Institutions might also be considered as fora for distributing power and as arenas wherein social conflict took place, creating public spaces of confrontation and generating certain obligations and rules. Self-conscious continuity was a tool of legitimacy, especially in a context of struggle, whilst power relations could be masked through institutions.

At the same time, broader questions of a less functional nature retain their importance for the historian. How important and how different were distinctions between lay and clerical in Islam, Byzantium, and Western Christendom, and what effect did these distinctions have? How far should the impetus to institutionalisation be seen as bottom-up or top-down, or what is the varying combination of the two? Is there an identifiable pattern of development in Western Christendom towards more complex institutions, perhaps to be contrasted with a pattern of increasing simplicity in the Islamic world? Often, as might be expected in an initial investigation, the papers will reach specific conclusions but also comparative questions, yet some initial comparative conclusions also emerge.

A further purpose of this project has been to work towards a better picture of medieval institutions and institutionalisation for use in contemporary debate, notably over the character of Europe. By concentrating on the problem of the diverse shapes that institutions took in different societies, the present study seeks to take into account post-Eurocentric narratives particularly from the social sciences, which insist on the necessity of highlighting the "fluidity

and connectivity of people, ideas and political structures,"[3] whilst continuing to operate within a rigorously comparative framework of medieval historical analysis. Since at least the late 19th century, social scientific scholarship has acknowledged the importance of medieval studies to present-day understandings of Europe, whether those understandings approach "Europe" as a concept; as a complex set of economic and political institutions in its own right; or as a historical "stage" on which institutions and individuals alike operate on a day-to-day basis.[4] More recently, a small but increasingly significant body of social scientific research has sought to explain Europe's (economic) present through the modelling of its medieval past.[5] Such authors have stressed the importance of economic institutions in the shaping of western development in the Modern era, comparing them with their Islamic counterparts; the latter are defined as atomistic enterprises in which cooperation was temporary, in contrast with the long-term character that marked western institutions. Such works suggest that a thoroughly researched historical approach to institutions and processes of institutionalisation in the Middle Ages is badly needed.

In addition, intensified globalisation and processes of European integration and fragmentation have contributed to a widespread consensus that the ground is shifting beneath established political institutions, practices, and concepts. This consensus has led in turn to social scientific calls for "new medieval" or "neo-medieval" conceptualisations of territoriality and sovereignty – conceptualisations that are "capable of superseding traditional realist or functionalist approaches to Europe and the European Union."[6] The "new medieval" heralded by political scientists, legal scholars and sociologists – as

3 S.S. Amrith, "Indians Overseas? Governing Tamil Migration to Malaya, 1870–1941," *Past and Present* 208 (2010), 231–261.

4 See also below, Humfress, 16–17.

5 A. Greif, *Institutions and the Path to the Modern Economy* (Cambridge: Cambridge University Press, 2006); J. Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford: Oxford University Press, 2007); T. Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2010); M. Mitterauer, *Why Europe: The Medieval Origins of its Special Path* (Chicago: University of Chicago Press, 2010).

6 J. Anderson, "The Shifting Stage of Politics: New Medieval and Postmodern Territorialities?" *Environment and Planning D: Society and Space* 14 (1996), 133–153. Also H. Bull, *The Anarchical Society* (London: Macmillan, 1977); N. Winn, *Neo-Medievalism and Civil Wars* (London: Taylor and Francis, 2004); J. Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford: Oxford University Press, 2007); W. Armstrong and J. Anderson, *Geopolitics of European Union Enlargement: The Fortress Empire* (London: Routledge, 2007); G. Popescu, *Bordering and Ordering the Twenty-First Century: Understanding Borders* (Lanham: Rowman and Littlefield, 2011).

well as via newspapers, television and other public media outlets – is itself, however, premised on outdated understandings of "the" medieval, perpetuating parochial perspectives linked to nationalist and colonial concerns of the 19th century. One of the effects of the "new medieval" in legal and social science scholarship has thus been to reify the very divisions and binary oppositions that present-day medieval scholarship seeks to challenge: East vs. West; Islam vs. Christianity; the "Middle Ages" vs. Modernity. It is the task of medievalists to inform and thereby to raise the level of modern debate.

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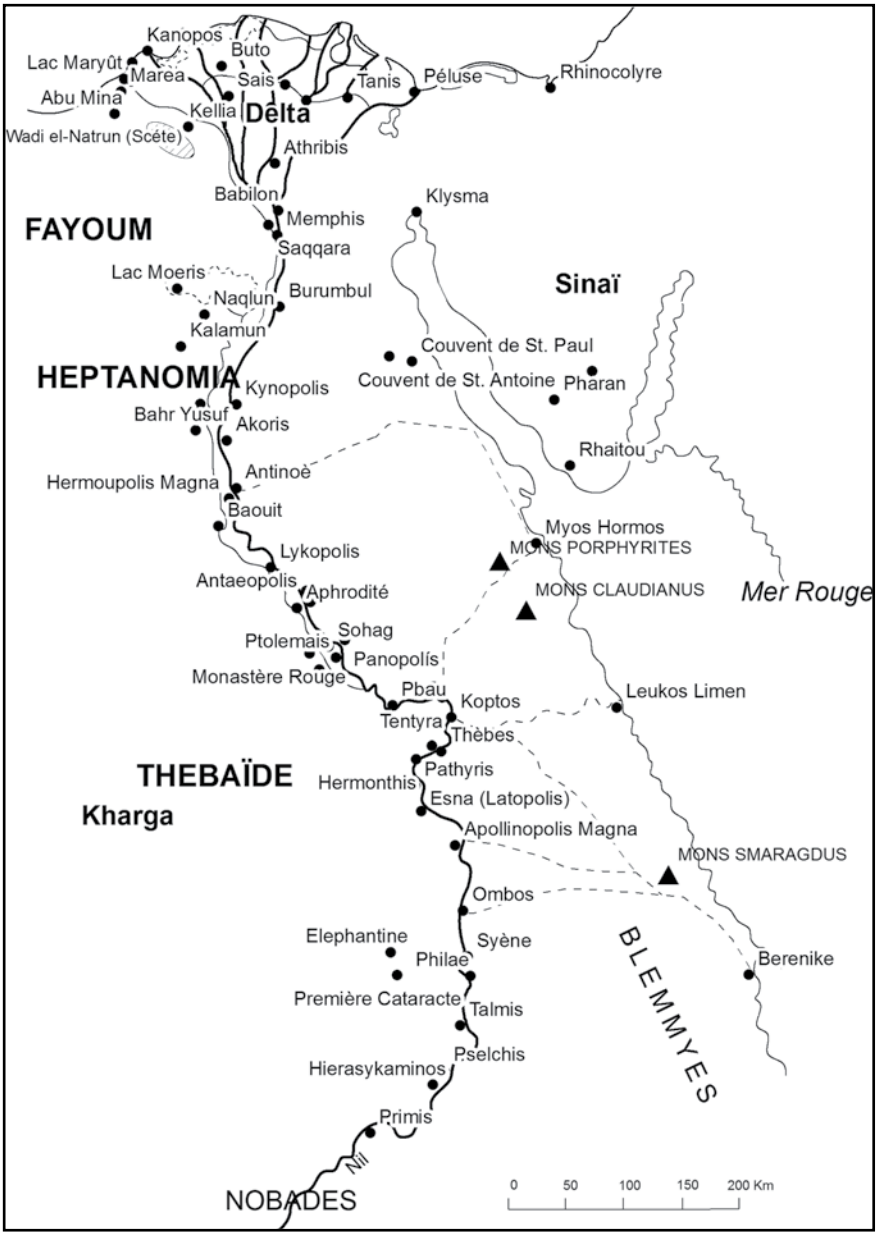
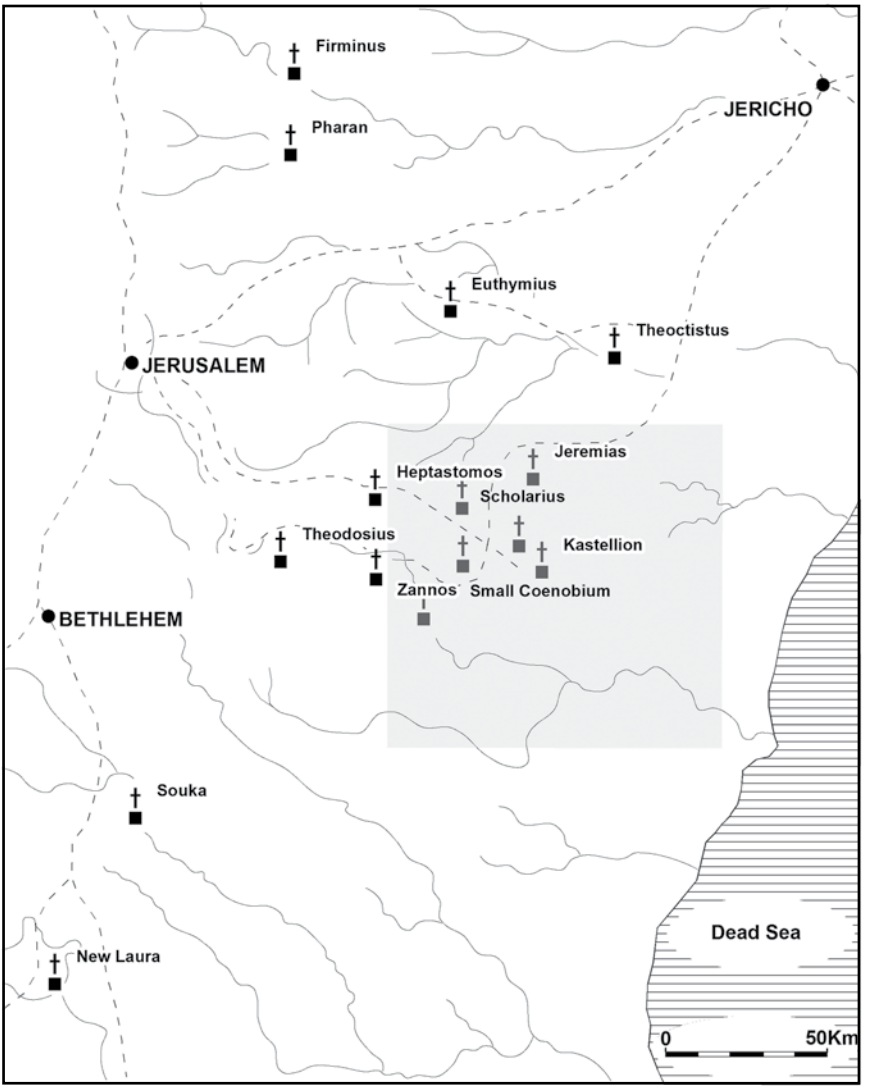
Maps



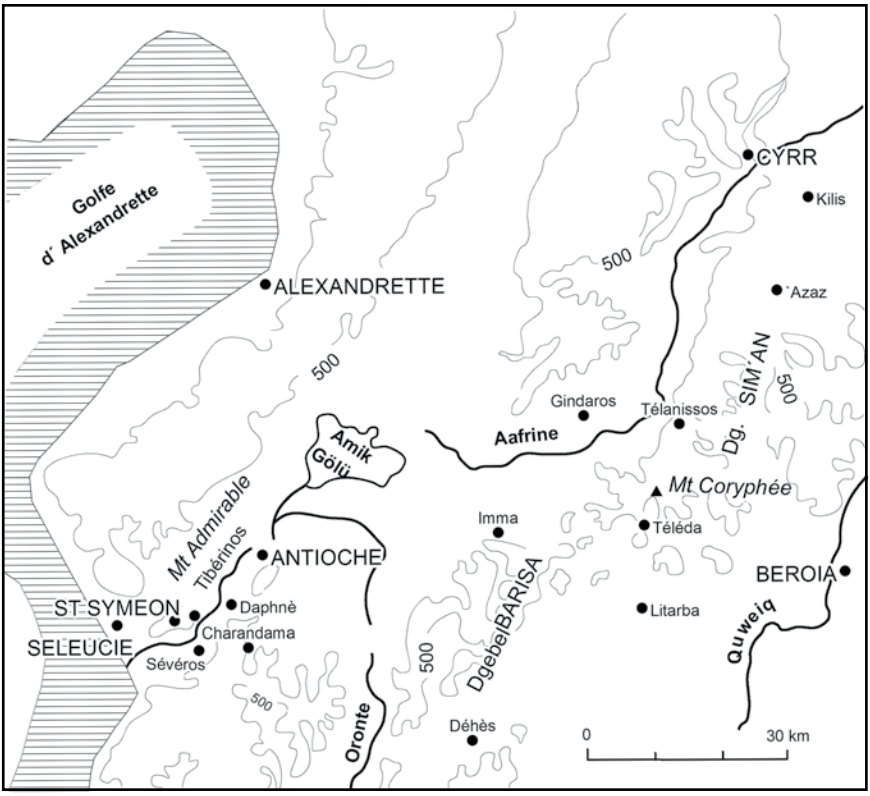
MAP 1 *Byzantine Egypt*

FROM E. WIPSZYCKA, *MOINES ET COMMUNAUTÉS MONASTIQUES EN ÉGYPTE (IV^E-VIII^E SIÈCLES)* (WARSAW, 2009)



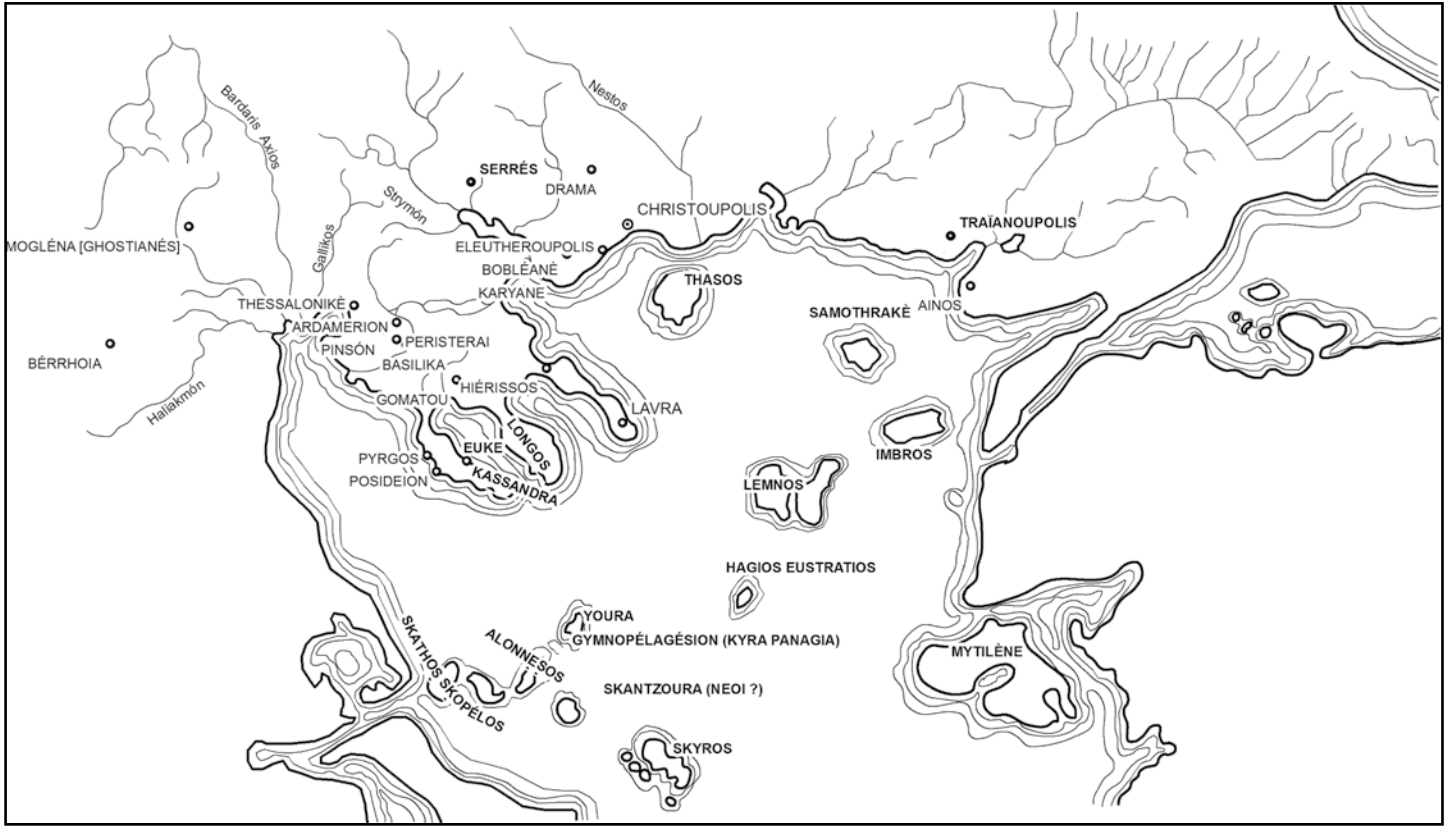
MAP 2 *Monasticism in the Judean desert*

FROM J. PATRICH, *SABAS, LEADER OF PALESTINIAN MONASTICISM, A COMPARATIVE STUDY IN EASTERN MONASTICISM, FOURTH TO SEVENTH CENTURIES* (WASHINGTON DC, 1995)



MAP 3 *North Syria*

FROM M. KAPLAN, *LES HOMMES ET LA TERRE À BYZANCE DU VI^E AU XI^E SIÈCLE : PROPRIÉTÉ ET EXPLOITATION DU SOL* (PARIS, 1992)



MAP 4 *Athos*

FROM *ACTES DE LAVRA I, DES ORIGINES À 1204*, ED. P. LEMERLE ET AL. (ARCHIVES DE L'ATHOS V; PARIS 1970)

PART 1

Approaches and Explorations

CHAPTER 1

Comparing Medieval Institutions

A Few Introductory Remarks

Gadi Algazi

Comparisons

Can we engage in large-scale comparisons between societies and even groups of historical societies and ask why they changed in one and not the other without assuming the superiority of one particular historical path, without taking this path for granted even while rejecting any value judgements, and without reducing alternative trajectories to no more than the roads not taken? Can we do so without essentializing whole civilizations, presenting them as coherent wholes and ignoring their relationships, entanglements, and processes of cultural borrowing? And, assuming we have reasonable solutions for these issues – how should we proceed when comparing pre-modern, and in particular medieval societies, without two of the tools that serve to check uncontrolled and impressionistic comparisons and ideological bias – reliable quantification and accepted theoretical models for conceptualizing whole societies as social formations, models which could offer sets of accepted priorities and focus attention on crucial dimensions and their articulation?

This volume seeks to make a contribution to these thorny issues. The chapters attempt to explore differences, and perhaps explain divergences in historical trajectories, by focusing on institutions. Some of the advantages of the focus on institutions would be familiar to any practitioner of the craft of history. Most importantly, it imposes a few useful limitations, a few simple "hands off rules" for comparative historical research: No invocations of mysterious "mentalities" to explain divergent historical paths of whole societies (not even when they seek to sneak back in a new guise as a "habitus" conjured up at will without further evidence). No summary invocations of "culture" as a summary explanation of differences between historical, differentiated societies – not even of culture's older sister, "religion": Mediterranean mentality, Western culture, Islam and Christianity would not do. This, however, does not imply excluding beliefs or religious organization from consideration, on the contrary: Some of the most enlightening exercises in historical comparison to be found in the next pages are played out far below the level of received oppositions between "Islam" and "Christianity", but in cases where – within the broad framework of a common faith – doctrinal traditions, religious practices and

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specific configurations of political power and religious authority go a long way toward explaining observed differences (I'm thinking here especially of Maribel Fierro's insightful comparison between Sunni ʿAbbāsids, Ismaʿili Fatimids, and the "Sunniticised Shiʿism" of the Almohads, but see also Michel Kaplan's account of the institutionalization of early Christian monasticism in varying contexts).

The second advantage of the basic focus on institutions is that it directs historians' attention to some durable properties of societies. This works against the tendency to explain far-reaching divergences through momentary historical conjunctures, fateful decisions or momentous interventions. A recent upsurge of studies of the invention of almost anything tends to suggest that some originary moment can be located, a foundational act of far-reaching consequences. This makes for good reading, enhances the drama, can rectify far too deterministic accounts of historical evolution with a good measure of contingency, but may also occasionally bring us back to an old-fashioned, long-discarded "quest of origins", in which an updated, constructivist version of heroic history would save us the trouble of building processual accounts of historical change.

We may find reaching an accepted working definition of institutions quite difficult, but framing comparisons in relation to institutions still suggests a useful perspective, if not a shared, theoretically tight framework (if there can be one). Perhaps also for this reason, contributions to the volume tend to avoid comparing whole societies and committing themselves to some overarching view of the social whole. If this is not to be done impressionistically, or worse – if whole civilizations are not to be reduced to a single iconic institution, modelling a whole society or a social formation would require, I think, the adoption of a shared theoretical approach. Instead, the chapters often opt for mid-level comparisons, using a particular institution or an important element of institutionalization processes as a point of entry into more complex configurations: The act and processes of codification, the extraction and distribution of revenues in medieval polities, or the ways some special places – palaces – become foci of processes of institutionalization. Here, a modicum of abstraction is not necessarily the precondition for engaging with historical comparisons but its outcome.

At the background of the volume lurks the recent resurgence of attempts to explain – and perhaps to conjure – "great divergences" between "East" and "West", between Christendom and Islam, and in particular the New Institutional Economics school's emphasis on the role of institutions in the development of economies. This is taken as a productive challenge, but an effort is made to take a different path – especially to avoid binary comparisons in favour of

comparisons between multiple objects that seem to lend themselves less easily to the contrastive essentialization of whole civilizations, religions or regions; to mitigate the tendency to construct simplified oppositions between isolated and coherent wholes ("Christendom", "The West") by considering related and often intertwined traditions; and finally, to avoid surreptitious teleology. This is perhaps the most difficult challenge if one avoids the simplest antidote – constructing "islands of history" leading nowhere – and insists on keeping one's eye on the big questions, on the historical evolution of societies.

Institutions

Institutions have no generally accepted definition across disciplines and theoretical orientations. I find Jacques Revel's distinction between three broadly defined understandings of institutions useful: the strict and technical definition of institutions as legal-political entities prevalent in legal history and the traditional history of institutions; a more recent, somewhat broader concept referring to social bodies functioning according to rules and norms (such as schools or trade unions), and a truly wide definition which sees institutions wherever regular, recurring forms of conduct subject to norms and based on mutual expectations can be detected.[1] While the wide definition may be Durkheimian in inspiration, Weber operated mainly with a narrow one, preferring the German *Anstalt* to the Latinized *Institution*. Among other things, this also helped him circumvent a further complication that arises from the fact that "institution" denotes both a type of entity and an activity – the act of instituting, that Bourdieu was especially interested in.[2] The initiators of the Dresden research project, for their part, opted for the title "institutionality and historicity", making clear in this way that they were interested not in "institutions" in the strict sense but more broadly in any mechanisms for ordering, stabilizing and regularizing conduct, transcending local and temporal contexts.[3]

These definitions with their innumerable variants are not likely to vanish, not only because institutions are so basic to our lives and so difficult to pin

1 Jacques Revel, "L'institution et le social," in *Les formes de l'expérience: Une autre histoire sociale*, Bernard Lepetit, ed. (Paris: Albin Michel, 1997), 63–84.

2 See the enlightening discussion by Peter von Moos, "Krise und Kritik der Institutionalität: Die mittelalterliche Kirche als 'Anstalt' und 'Himmelreich auf Erden'," in *Institutionalität und Symbolisierung*, Gert Melville. ed. (Cologne: Böhlau, 2001), 293–340.

3 See, for instance, Gert Melville, "Institutionen im Mittelalter. Neue Forschungsprobleme," *Bulletin de la Société des amis de l'Institut Historique Allemand* 4 (1998), 11–33.

down, but also because competing definitions articulate very different research agendas. Reading the contributions in this volume, however, it seems that even though the wide definition is occasionally invoked at the outset, most of the following analysis actually operates with a narrower understanding of what is meant by institutions,[4] the one that enables medievalists to refer to "functioning institutions", to describe their actions, to treat them as both powerful, seemingly unified actors *and* as arenas of internal social conflict. If the wide definition of institutions is adopted, it is difficult to exclude anything from consideration, let alone conduct controlled comparisons; the practical move to a narrower definition is hence understandable, perhaps an example of what Michael Baxandall has termed "the Bouguer principle", as in the course of actual research initially broad definitions and very large questions make way – sometimes imperceptibly – for narrower definitions allowing for a focused examination of evidence.[5] Still, we may find ourselves using the same term to refer to perhaps related but still radically different phenomena, say, to a type of social arrangement (i.e., private property), to a codified element of culture or a regular pattern of interlocking conducts and expectations (a convention like visual perspective or a recognized procedure such as codification), and at the same time to institutions in the sense of heterogeneous structures, formal or not, bundling people, resources and forms (such as the family or the western Church). We may then switch definitions at will and occasionally attribute to "institutions" in one sense that which can only be reasonably said about and ascribed to a different class of phenomena.

Can the New Institutionalist Economics help out? As Eduardo Manzano and Susana Narotzky remind us, following Huri İslamoğlu, NIE has advanced a research program intent on identifying the kind of institutions capable of furthering economic growth, ensuring predictability and reducing "transaction costs"; from this perspective, this is also the yardstick by which past institutions are measured. Behind the term "transaction costs", however, may lurk not only such traditional enemies of good business as pirates or capricious

4 Mary Douglas's fascinating *How Institutions Think* (Syracuse: Syracuse University Press, 1986) does not actually show how institutions think, for after a while, the definition of institutions is expanded: it is sometimes a social grouping, sometimes a discipline, a form of classification; if the minimal definition of an institution is "a convention" (p. 46), it becomes almost coextensive with the codified parts of culture as a whole. This misses the provocation of her original question: We need not be convinced that thinking happens in and through signs, that culture – and specifically language – mediates and shapes, to an extent, thought. But how do *institutions* think?

5 Michael Baxandall, "Art, Society, and the Bouguer Principle," *Representations* 12 (1985), 32–43.

governments, but also political deliberation and social resistance: Transaction costs, writes İslamoğlu, "may point to the politics of the market or property in any given environment. In that sense, attempts at removing transaction costs amount to attempts at transcending politics and abstracting the market, state and law from politics or from power relations that are constitutive of them".[6]

Institutionalist accounts of historical evolution took shape in opposition to the limitations of traditional economic models, to the invocations of neat *homines economici* participating in game-theoretical abstractions who often seem to fail to become flesh. New institutionalist accounts of economic history are hence to a large extent about the discovery of the social and cultural conditions of economic action (and therefore also the half-hearted, reluctant recognition of politics) – and about their elimination at the same time. The politics shaping "economic behaviour" only emerges obliquely for a moment in order to be subsumed again conceptually under "transaction costs" and overcome in reality through "good institutions". This is reminiscent of an earlier moment of recognition-through-opposition in the history of the human sciences: The (re)discovery of "tradition" and "culture" in the heydays of modernization theory as forces resisting or subverting attempted "modernization". And as with the earlier discovery of Tradition and Culture, what is recognized as resisting neat conceptualization and the forced transformation of pre-existing social practices can easily become itself mystified, a master key to open every door. The challenge of institutionalist accounts of economic history is salutary, but it can hardly be expected to provide us with good concepts to work with. When it comes to "institutions" one is likely to encounter not a sharp analytical concept but a residual category which covers the enabling and constraining conditions of economic action. This amounts to almost everything Weber hoped to write about in what became *Economy and Society*. If this is the case, it is not difficult to imagine how culturalist and institutionalist accounts of "institutions" might converge.

Modernizing the Middle Ages

In Avner Greif's version, for instance, institutions are "interrelated systems" consisting of "rules, beliefs, norms, and organizations". With so much to go by,

6 Huri İslamoğlu, "Towards a Political Economy of Legal Administrative Constitutions of Individual Property," in *Constituting Modernity: Private Property in the East and West,* ed. İslamoğlu (London: I.B. Tauris, 2004), 3–34, here pp. 6–7, quoted by Narotzky and Manzano.

"they provide individuals with the cognitive, coordinative, normative, and informational micro-foundations of behavior as they enable, guide, and motivate them to follow specific behaviour". It seems there is very little institutions cannot do, for in this approach, "the 'cultural' and the 'institutional' overlap". They shaped in late medieval Europe a "particular societal organization – centered on self-governed, non-kin-based organizations and individualism" which "has been behind the behaviour and outcomes that led to European-specific economic and political developments".[7]

It is not too difficult to find in this confident assertion precisely the elements that İslamoğlu has identified as constitutive of ideologies of Western exceptionalism: "Such mystifications often rest on a dichotomous conception of world history which depicts the West as the domain of civil society, private property and individual will and the East as the domain of deprivations, where neither civil society, nor private property nor individual free will capable of challenging religious dogma could flourish".[8]

Fortunately enough, in Greif's version one encounters in the late Middle Ages precisely the same features believed to have been characteristic of Modern Europe: "It is notable, however, that the institutional particularities of the late medieval period are also associated with the rise of Europe in the modern period. The two main periods of economic development in Europe share similar institutional foundations".[9]

Even if one accepts modern sermons about the virtues of self-governance and individualism for securing "economic growth", of ensuring predictability through the rule of law, there is no *a priori* reason to assume that the same set of rules also applied to the heroic age – to "primitive accumulation" (if it ever came to end), or in a very different spirit, to the great upheaval that put modern structures in place. This was Max Weber's most fundamental insight in *The Protestant Ethic*, the one that served him to construct the problem in the first place, whatever one thinks of the solution he offered. But the New Modern Middle Ages are not about the ironies of history but about securing a purified genealogy. For a while it seemed that the Middle Ages have finally lost their

7 Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (New York: Cambridge University Press, 2006), xv, 14, 22, 26 respectively.

8 İslamoğlu, "Preface," *Constituting Modernity*, x.

9 Greif, *Institutions*, 27. For a radically different depiction of the history of kinship in Europe and its role in the making of modern Capitalism, see David W. Sabean, *Kinship in Neckarhausen, 1700–1870* (Cambridge: Cambridge University Press, 1998), 398–510, and more generally: *Kinship in Europe, 1300–1900*, David W. Sabean, Simon Teuscher, and Jon Mathieu, eds. (New York: Berghahn Books, 2007).

political relevance, having been distanced and othered as western polities left behind their agrarian past and – at least in most of Western Europe after the Second World War – laid to rest the attempted revivals of any Middle Ages. Yet not for long. In some contexts we witness a rapid, though somewhat belated, modernization of the Western Middle Ages: One moves again from assertions of their (complete and exaggerated) alterity to presenting them as highways to modernity. The us and them contrast is retained: One alterity is discarded in favour of another as the Middle Ages are enlisted in attempts to other the Rest who failed to be like the imagined West.

In this context, the chapters in this volume that focus on the nexus of power and economic institutions are especially relevant. For the intriguing claim of Susana Narotzky and Eduardo Manzano is that the inclusion of non-economic functions in the *muḥtasib*'s office in medieval Islamic cities – entrusted not only with controlling market practices in a narrow economic sense but also with regulating moral and religious behaviour – was not an expression of some pre-modern, medieval or Islamic inability to differentiate between autonomous realms of action, some blindness to the eternally valid distinctions between Economy, Society, and Religion. Instead of conceiving the *muḥtasib*'s office in purely negative and teleological terms as not-yet-modern, they argue that it departed from pre-Islamic institutional traditions in order to articulate a particular moral economy. They see it as an attempt to embed economic practices in a particular conception of the social-religious order related to the legitimacy claims of the caliphal power: "It would be wrong to interpret *ḥisba* as being the result of ignorance of what has developed into mainstream neoclassical economic laws. On the contrary, there seems to have been a thorough knowledge of economic mechanisms such as price-formation in medieval Islam". The particular history of the institution diverges from the familiar path leading from "embedded" to "disembedded" markets: "The *muḥtasib*'s role in the market tries to emphasise the moral aspect of contracts in transactions, and tries to channel contracts into the framework of general well-being".

Without using once the term "institution", Hugh Kennedy lays out the evidence for the existence of the institution of landed private property in the first two centuries of Islam – mainly in the Fertile Crescent, and perhaps more in frontier regions. He does so by following the emergence and uses of a fiscal device, the *qaṭīʿa* – a perpetual and heritable land grant. This disrupts any neat scheme of transition to feudal tenure in the early Islamic world. It is also a powerful reminder that economic institutions do not naturally arise in "Society" neatly opposed to "The State", but are created by the state – though not by the state alone. Neither was the institution a simple derivative of some Islamic religious or legal doctrine. The fact, however, that this fiscal device had

to face social censorship finds interesting parallels in Narotzky and Manzano's exploration of the attempt to embed market practices within a "moral economy" whose classic spokesmen were the *'ulamā'*.

Although both papers are not comparative in terms of their subject matter, they exemplify what historical comparison can achieve: As they disrupt evolutionary schemes, they turn the question, why has something failed to happen (the rise of "good" institutions facilitating economic growth) on its head by asking: Why has *this* happened at all? Comparing societies is often an indirect way of comparing (and sometimes, judging) whole paths of development, whereby historical societies are treated as no more than instantiations of taken for granted evolutionary schemes. Once such schemes are disrupted when societies are shown not to have languished in their primeval state but to have actually moved "in the wrong direction" – from a narrow and more formal conception of the role of the *muḥtasib* overseeing the markets to a more expansive one, or from perpetual landed property to the famous *iqtaʿ* of later periods – history, contingency and conflict are back and the notion of a proper and natural direction is radically questioned.

Comparison is not necessarily a good way for providing answers; at best, it can help to discard or qualify some. But it can serve to generate questions, to sharpen issues. Three studies of fiscal resources and the extraction of revenues provide such a useful shared focus. Annliese Nef provides a telling example of the tenacity of Muslim state structures in eleventh- and twelfth-century Sicily controlled by the "Norman" Hautevilles – a state that combined different systems of reference but "whose heart, fiscal heart, was of Islamic inspiration". While this entangled history unsettles neat oppositions and complicates any account of medieval "state formation", Sandro Carocci, Simone Collavini and Vivien Prigent offer complementary and contrasting accounts of the extraction of revenues, their flow and uses: Carocci and Collavini offer an original analysis which decenters the state and directs our attention to the workings of local lordship; Prigent takes a hard look at the mobilisation of fiscal resources at the level of the Byzantine Empire. Read in conjunction, they raise a host of intriguing questions.

Empire, state, and local lordships: How important, for instance, is scale – or rather, social distance and the creation of long-term channels and chains of circulation? One could usefully contrast Carocci and Collavini's suggestion that *seigneuries* extracting revenues from local peasantries living under a lord's direct control should be treated as "small polities", in terms no different from those usually reserved for the state – with Vivien Prigent's exploration of the efforts invested in the Byzantine Empire to ensure "the greatest possible distancing between the one responsible for and the one benefiting from the

levy" – to channel extracted revenues, in monetised form, to the centre before being redistributed. This is about much more than different techniques of extracting and circulating revenues; it raises fundamental issues in our understanding of states, legitimacy and the functioning of formal institutions. Does a revenue claimed in the name of a distant political ruler and redistributed from the centre have the same political effects on both elites and subject populations? What about legitimacy – did local lordships really rely on a notion of legitimacy similar to the one advanced by states? Carrocci and Collavini's usefully insist that one should neither accord the state special treatment nor take its claims at face value. But these claims surely count for something. One need not view "government" and "power", lordships and states as essentially different in order to ask about the stakes involved in upholding such claims. States had stakes in legitimizing their actions – and this could turn out to be a costly business.

Carocci and Collavini show how limited a statist perspective on an issue so basic as the extraction of revenues in West Europe polities before the thirteenth century can be, leading to a characterisation of local lordship in purely negative terms. Still, a statist perspective may remain at work when local lordships are described in terms suggesting the kind of expectations associated with state power. To take an example dear to my heart: Could rulers' claims to defend Christendom and to protect their subjects be easily equated with lords' providing "protection" and security services? The notion of "protection costs" may be sobering when it comes to the self-claims of moralizing empires – and still too euphemistic when applied to warring lords.[10] Were local lords expected to govern, or simply to exercise power? Should we use an Augustinian (or, for that matter, Brunnerian, or Foucauldian) notion of undifferentiated power, basically the same on all levels, or opt for an Aristotelian (or Thomist) approach which insists that not all *dominium* is the same, that the distinction between domination and legitimate authority is useful analytically?

10 The notion was originally developed by F.C. Lane, working on Venetian history, during the Second World War: Frederic C. Lane, "The Economic Meaning of War and Protection," *The Journal of Social Philosophy and Jurisprudence* 7:3 (1942), 254–270; further developed in his "Economic Consequences of Organized Violence," *Journal of Economic History* 18 (1958), 401–417. I have tried to point out some pitfalls inherent in conceptualizing "protection" as service to be purchased and "violence" in market terms, as both Frederic Lane and Norbert Elias have done: Gadi Algazi, *Herrengewalt und Gewalt der Herren im späten Mittelalter: Herrschaft, Gegenseitigkeit und Sprachgebrauch* (Frankfurt am Main/New York: Campus, 1996), 130, 159.

Making Institutions Retroactively

In societies with a well-entrenched fabric of institutions, one is often possessed by the position one occupies, entangled in a web of institutionalized expectations and obligations. In Marx's phrase, it is as if the estate inherits the heir. But in some of the most telling cases analyzed here, unworthy inheritors make efforts to appropriate uncertain historical legacies – and transform them thereby into something more resembling institutions. Institutionalization processes, it might be argued, occur only partly "in real time"; a significant part of the process happens *ex post facto*, as messy past realities are endowed with new meanings, as improvised practices are formalized and regularized after the fact in ways that may not have been possible within their actual, contingent contexts.

This may perhaps be one way of describing the retroactive making of the Roman Law in the high Middle Ages by interpreters working in particular historical settings: Considering themselves distant enough in terms of historical circumstances to treat the code "as a 'strange' text, a text written for a different age and society" (Bernard Stolte), yet according it enormous authority, and at the very same time treating it as a "seamless web" calling for far-reaching interpretation and mediation. In this particular sense, the *Corpus juris* seems to have turned from a text to a model – from a singular legal text with uncertain possible uses to a model that shapes the production of further texts, a core element in institution-building – long after the fact.

Following this line of thought, some Western medieval invocations of the lost order that was Rome, of orderly institutions and all-encompassing coherent codification, can be said to be specifically medieval achievements. As Emanuele Conte and Magnus Ryan remind us, the early Middle Ages did not need to wait for the rediscovery of Roman Law to engage with codification and legislation. But their sort of legislation was often "shapeless", that is formed in ways modern observers failed to recognize as the proper shape denoting formal authority. Perhaps more crucially, they show, the spectre of overarching, encompassing codification from which particular laws emanate kept haunting the practice of editing medieval legal sources: "From the cloudy variety of the surviving records certain texts were resolved and isolated as possessing programmatic importance over others. Something of the nineteenth-century codification mentality inflected this entire procedure because the scrappy and the terse tended to be interpreted as deriving from, or were treated as incomprehensible as free-standing documents without, the presumptively basic or programmatic".

Processes of *ex post facto* institutionalization do not involve only distilling procedures from messy practices, turning finished texts into productive

textual models, appropriating knowledge sedimented in past actions. The medieval glossators, in Hans Erich Troje's account, working under the assumption of the inner coherence of both the Justinian *Code* and the *Digest*, sought to uncover general principles believed to be immanent in them, and hence engaged in isolating and developing abstract concepts.[11] The legal systematics underlying their construction of the texts they inherited (or rather took possession of as legatees, to adopt Bernard Stolte's felicitous distinction) was hence at the same time the outcome of their very efforts. Not only knowledge itself, it seems, but received images of knowledge play a significant part in the retroactive making of institutions.

Institutions are often portrayed as capable of transcending particular contexts through generality, formality, and regularity. But as Bernard Stolte points out, at least in the case of Justinianic legislation, contingent historical contexts were actually overcome only by later interpreters, sharing the idea that the body of Justinianic texts "formed a seamless web, in which no contradictions were to be found", and hence bringing to bear on individual passages "a panoply of interpretative techniques … with an utter disregard for their historical context". Overcoming context took some time indeed, and it was partly not the accomplishment of any text or institution but of subsequent processes of mediation.

Whereas in the case of the medieval West and Byzantium one still grapples with the enormous weight of the *Corpus juris*, trying to contextualize a giant, one has often noted the lack of anything similar in Islamic polities. Maribel Fierro's point of departure is precisely this: a code in the special "modern" sense, claiming to embody the fullness of the law and pretending to make subsequent interpretation by jurists superfluous. Such a code, she shows, was indeed produced by the Fatimids, but in very particular circumstances. Her point, however, is not to deconstruct commonly held assumptions but to embed exceptional cases in a systematic comparison which yields an impressive explanatory model: A particular relationship between a governing juridico-religious doctrine (the Isma'ili image of the ruler as an inspired *imām*), a

11 "Glossatoren bevorzugten dabei Gesichtspunkte, die im Text keineswegs nur der Institutionen, vielmehr auch der Digesten häufig ausgesprochen und häufig immanent vorhanden sind … so daß, wer nicht mit der Antike beginnen will, sagen könnte, in den mittelalterlichen *continuationes rubricae* läge der Anfang moderner Systematik." Hans Erich Troje, "Wissenschaftlichkeit und System in der Jurisprudenz des 16. Jahrhunderts," in: *Philosophie und Rechtswissenschaft. Zum Problem ihrer Beziehungen im 19. Jahrhundert*, Jürgen Blühdorn and Joachim Ritter, eds. (Frankfurt am Main: Klostermann, 1969), 63–97, at p. 72.

particular mode of textual production of the code (represented as directly sponsored and supervised by an inspired ruler), which accorded scholars only a secondary role. A tight model enables using complex historical circumstances as cases; the model can be refined through the consideration of the Almohads and throws into relief the Sunni case, in which the *'ulamā'* were considered the spokesmen of doctrine and authorised producers of the legal tradition. Differences between sorts of legal texts, different shapes of scholarly authority, and even different forms of scholarly self-representation can hence be meaningfully related. All are embedded, in Fierro's reconstruction, in different shapes of the central power, the "state".

The part of the volume dedicated to places and palaces in polycentered polities without permanent centres of power is particularly illuminating precisely because palaces in themselves are *not* institutions but merely the scaffolding of transient social configurations – for rulers' households or courts. In Simon MacLean's fascinating discussion of tenth-century dynasties seeking to appropriate ninth-century Carolingian palaces, the new dynasties "could not simply inherit Carolingian resources in these heartlands, for the notion of crown property was itself not clearly institutionalised. Instead, they needed to assert their claims to these resources and the territories in which they lay, and this gives us an alternative way to understand the use of the label *palatium* in this period – as representing an argument that these residences, which were symbolically important but lay in territories on the fringes of rulers' power, were inherently royal and should thus be associated with the king, as it were *ex officio*". There was nothing new in palaces being considered representations – extensions by synecdoche – of present, though momentarily absent, rulers; now, however, one sought to turn them into "assertions of continuity and stability" where neither the recognition of such claims nor stability and continuity could be safely expected. Similarly, in Stuart Airlie's interpretation of the way by which in Richer's chronicle the *palatium* in Aachen becomes "a place of kings", partial institutionalization takes place in the realm of *ex post* literary representations. Here, we come quite close to studying the actual making of institutions, to its risks and uncertainties, and can indeed speak of the construction of their meaning – perhaps the unintended consequence of political contestation, as MacLean suggests, of strategies of appropriation and desecration which in some ways contribute to the very making of what is at stake, perhaps in a manner analogous to the creation of a stable canon as a cultural institution by rival parties contending for precarious hegemony.

If institutional self-images are not to be taken for granted, if institutions' claims to secure stability and continuity are not to be sneaked into their very definition, if we wish to describe and analyze institutions and their emergence

without reproducing their own representations, which are so much part of their functioning – then fragile, emerging and wannabe-institutions may be good to think with. The Middle Ages, however we define them, administering the rests and relics of ancient empires and filled with unworthy inheritors and anxious legatees, are "middling" and messy enough to provide us with some good case-studies to do this. Herein lies part of their usefulness. It would be a pity, and perhaps a waste of time, to modernize them.

CHAPTER 2

Institutionalisation between Theory and Practice

Comparative Approaches to Medieval Islamic and Late Roman Law

Caroline Humfress

It soon became obvious that early medieval law, even the law of ancient Greece, had much more in common with many non-Western systems than the law of the modern West. The West's highly significant differentiation came as a result of cultural choices made in the period between the eleventh and thirteenth centuries which saw the revival of academic legal analysis for the first time since the end of the Roman Empire.[1]

1 Questioning Assumptions

Contemporary theorists working on institutions and processes of institutionalisation range across an incredible array of disciplinary boundaries including economics, sociology, anthropology, law, history, political science, psychology and myriad branches of organisational and business studies. Virtually all of these contemporary scholars, however, either implicitly or explicitly, build upon the work of key nineteenth- and early twentieth-century social theorists, historians and legal scholars – for example Otto von Gierke (1841–1921), Émile Durkheim (1858–1917), Georg Simmel (1858–1918), Max Weber (1864–1920) and Alfred Schütz (1899–1959). Each of these foundational late nineteenth- and early twentieth-century thinkers was engaged, in turn, with the ancient and medieval past, but their shared concern, in so far as they had one, was *their* present. More specifically, von Gierke, Durkheim, Weber etc. were each interested in accounting for the highly developed forms of "rationalised" social life, which they variously identified as operating within their own relatively recently industrialised societies: von Gierke and Weber with respect to the structure of the German state and other corporate associations, and Durkheim in relation to industrialised society in France. In other words, the theories of these foundational late nineteenth- and early twentieth-century thinkers built upon a shared idea of "the West's highly significant differentiation"

1 P. Hyams, "Due Process versus the Maintenance of Order in European Law: the Contribution of the Ius Commune," in *The Moral World of the Law*, ed. P. Coss (Cambridge: Cambridge University Press, 2000), 62–90, at 62.

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(to borrow a phrase from the opening quotation above). The West was "highly differentiated" in terms of space: societies outside Europe and North America had not developed the same forms of "rationalised" social life in the late nineteenth/early twentieth centuries. It was also "highly differentiated" in terms of time: past societies were qualitatively different, in particular in terms of the relationship between economic, social and legal structures. Some nineteenth- and early twentieth-century theorists explained this in "evolutionary" developmental terms; others, like Weber, sought analytical historical explanations.

A central question underlying this volume asks: "why did certain sorts of institutionalisation and institutional continuity come to characterise government and society in Christendom by the later middle ages, but not the Islamic world, whereas the reverse might have been predicted on the basis of the early medieval situation?" My initial response to this question is to suggest that certain sorts of institutionalisation and institutional continuity have come to characterise late medieval Christendom for us *today* because these were precisely the sorts of institutionalisation and institutional continuity emphasised within the rationalising, "systems-building" perspectives of virtually all the foundational nineteenth- and early twentieth-century European scholarship referred to above. For example, since at least the early nineteenth century, professional legal historians have painstakingly "identified," "reconstructed" and classified "Roman" legal institutions, including formal patterns of academic juristic thought – institutions which many legal historians now take to be "natural" and self-evident (again, as implied in the opening quotation above). Whereas comparable attempts to "identify" and "reconstruct" a field of early Islamic legal institutions seems, in general, to be strikingly recent. This last point can be illustrated using three examples, each taken from current historical scholarship on what is sometimes termed the "middle period" of Islamic legal history (i.e., *c.* 1000–1600 CE).

Our first example comes from a 2010 article by Marina Rustow, entitled "A petition to a woman at the Fatimid court (413–414 AH/1022–1023 CE)." Rustow opens her article with a discussion of S.M. Stern's 1964 volume, *Fātimid Decrees: Original Documents from the Fātimid Chancery*:

> S.M. Stern once lamented the number of extant Fatimid chancery documents as "pitifully small" compared to the thousands of state documents that have survived from the same period in Latin Europe … Stern's lament on the paucity of authentic documentary material is but one variation on a theme commonly sounded in medieval Near Eastern studies: the paucity of surviving documents. The term of comparison is usually either

> medieval Latin Europe or the Ottoman empire. Stern suggested that the dearth of archives surviving in continuity pointed to "certain characteristics of Islamic institutions (the lack of stable corporations for instance)" … In fact, the evidence of pre-Ottoman archives and archival practices is abundant, but it is also hardly investigated. Comparing the tens of thousands of surviving original Arabic papyri with early medieval Latin documents copied into cartularies suggests that the shopworn comparison with medieval Europe requires some rethinking. Frédéric Bauden has rightly called the notion that few documents have survived from the medieval Near East "calamitous," and made every effort to correct it for the Mamluk period in particular.[2]

Rustow's research thus suggests that our theoretical modeling of medieval Islamic institutions in Fatimid Egypt may in fact be premised on a misunderstanding of contemporary legal archival practices.

Our next example stresses a similar point, with specific reference to Islamic jurisprudence under the Mamluk sultanate. In a 2012 article entitled, "Royal Justice and Religious Law: Siyasa and Shari'a under the Mamluks," Yossef Rapoport develops what we might term an "institutional" understanding of medieval Islamic jurisprudence (*c.* 1250–1517 CE).[3] After briefly summarising current scholarship on Mamluk legal history, Rapoport outlines what is at stake in developing his particular perspective. He argues that most of the existing Western scholarship on the Mamluk legal system offers "moralizing, caricature-like accounts" that take "[Joseph] Schacht's classical model of a rigid and idealised Islamic law as their point of departure."[4] As in Weber's famous ideal type of "*qadi* justice," the "interaction between theory and practice" thus becomes framed as "an uneasy truce between religious scholars and rulers."[5] Rapoport continues:

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2 M. Rustow, "A Petition to a Woman at the Fatimid Court (413–414 A.H./1022–1023 CE)," *Bulletin of the School of Oriental and African Studies* 73 (2010), 1–27, at 1–3; S.M. Stern, *Fātimid Decrees: Original Documents from the Fātimid Chancery* (London: Faber and Faber, 1964); F. Bauden, "Mamluk Era Documentary Studies: the State of the Art," *Mamlūk Studies Review* 9 (2005), 15–60.

3 Y. Rapoport, "Royal Justice and Religious Law: Siyasa and Shari'a under the Mamluks," *Mamlūk Studies Review* 16 (2012), 71–102.

4 Rapoport, "Royal Justice and Religious Law," 72, with specific reference to Joseph Schacht's *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964).

5 Rapoport, "Royal Justice and Religious Law," 72. See also the paper by Maribel Fierro in this volume, below.

> There are two fundamental problems here. First, over the last two decades the model articulated by Schacht (but ultimately derived from Weber) has been refuted by literary and documentary evidence attesting to the continued development and applicability of Islamic law. We now know that Islamic legal theory never closed the door of *ijtihād* [i.e., making a legal decision by independent interpretation of the *Qur'an* and the *Sunna*], and there are by now quite a number of studies demonstrating actual, significant shifts in positive law. Change occurred through an articulation of new doctrine in a fatwā or a commentary, superseding the older doctrine preserved in the canonical texts. We also know now that Schacht underestimated the practical application of Islamic law, especially with regard to commercial contracts. Fatwās were given in response to questions arising from real life, as shown by examples from within the Mamluk domains. Changes introduced by Mamluk muftīs had implications for judicial practice. Finally, a 14th-century archive of the Islamic court of Jerusalem, discovered in the 1980s, is a tangible testament both to the wide-ranging jurisdiction of Mamluk qadis, as well as the close link between actual judicial practice and the legal literature.[6]

Approaching the various schools of Islamic jurisprudence as part of "institutionalised" social structures rather than as idealised "doctrinal" legal systems, Rapoport's research seeks to uncover the dialectical relationship between judicial practice and legal theory under the Mamluk Sultanate. In fact, Rapoport's earlier research, for example his 2005 monograph: *Marriage, Money and Divorce in Medieval Islamic Society*, explicitly challenges conventional periodisations and characterisations of "medieval" Islamic law – as do a number of other recent monographs on Islamic jurisprudence.[7]

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6 Rapoport, "Royal Justice and Religious Law," 73. On the 14th-century archive of the Islamic court of Jerusalem see D.P. Little, *Catalogue of the Islamic Documents from al-Haram aš-Šarīf in Jerusalem* (Beirut: Franz Steiner, 1984); D.P. Little, "The Significance of the Haram Documents for the Study of Medieval Islamic History," *Der Islam* 57 (1980), 189–217; D.P. Little, "Two Fourteenth Century Court Records From Jerusalem Concerning the Disposition of Slaves by Minors" *Arabica* 29 (1982), 16–49; D.P. Little, "Haram Documents Related to the Jews of Late Fourteenth Century Jerusalem," *Journal of Semitic Studies* 30 (1985), 227–264; and D.P. Little, "Documents Related to the Estates of a Merchant and His Wife in Late Fourteenth Century Jerusalem" *Mamluk Studies Review* 2 (1998), 93–190.

7 Y. Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005); H. Yanagihashi, *A History of the Early Islamic Law of Property: Reconstructing the Legal Development, 7th-9th Centuries* (Leiden: Brill, 2004); P. Hennigan, *The Birth of a Legal Institution: The Formation of the Waqf in Third-Century A.H. Hanafi Legal*

Our final example of recent methodological shifts with respect to medieval Islamic law focuses directly upon Islamic legal institutions, in particular *sharīʿa* courts (sometimes referred to as *qādī* courts). In their introduction to a special 2008 themed volume of the *Journal of Islamic Law and Society*, Ido Shahar and Iris Agmon state that:

> Orientalists, legal scholars and laymen alike have constructed the *shariʿa* court and *shariʿa* law in general as paradigmatically antithetical to the enlightened "Western" court of law. Thus, the qadi is perceived as the embodiment of "Oriental despotism", and "Kadijustiz" — as defined by Max Weber — came to symbolise an irrational form of law … This unsympathetic image of *shariʿa* courts and Islamic law, based mostly on erroneous information, has been redressed by scholars of Islamic law in recent decades. And yet the *shariʿa* court remains a largely understudied social arena, and our knowledge of what goes on inside *shariʿa* courts in different times and locations remains sketchy. Compared to other well-known "Islamic" institutions, such as the madrasa, the bazaar, the harem, or the mosque, the *shariʿa* court has received little scholarly attention. Given that it is *shariʿa* court records … and not the records of the madrasa, bazaar, or harem, which, in recent decades, have become a prime source for historical research on Muslim societies, the neglect of the *shariʿa* court as a distinct social institution worthy of study in its own right is a real puzzle.[8]

Shahar and Agmon attribute this failure to analyze and classify *sharīʿa* courts as socio-legal institutions to what they term a kind of "disciplinary orphanhood":

> For different reasons, legal historians, social historians and anthropologists have tended not to direct their scholarly attention to *sharīʿa* courts. We may say that the *shariʿa* court as a distinct socio-legal institution has suffered from "disciplinary orphanhood": No discipline has taken it upon itself to study this institution systematically. Over the last decade or so,

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Discourse (Leiden: Brill, 2004); and K. Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (New York: Oxford University Press, 2011).

8 I. Shahar and I. Agmon, "Introduction: Shifting Perspectives in the Study of Shariʿa Courts: Methodologies and Paradigms," *Islamic Law and Society* 15 (2008), 1–19, at 3. See also D.S. Powers, "Kadijustiz or Qadi Justice: A Paternity Dispute from Fourteenth-Century Morocco," *Islamic Law and Society* 1 (1995), 332–366.

> however, *shariʿa* courts gradually have become the object of new and perhaps unprecedented scholarly interest. What has triggered this recent shift?[9]

As the authors go on to demonstrate, the answer to this question is complicated, but seems to lie within broader "revisionist" approaches to Islamic societies, and in particular within a new focus on Islamic law "in action."[10]

I am by no means a scholar of early or medieval Islamic law and must leave detailed assessments of this new scholarship to the experts. I would suggest, however, that each of our three examples, Rustow on petitions to the Fāṭimid court, Rapoport on Mamluk fatwas, Shahar and Agmon on the institutional structure of the *sharīʿa* court, confront – in different ways – what Michael Chamberlain terms "… the accurate though non-specific notion of the 'informality' of high medieval Islamic societies."[11] Rustow explicitly states that her research on Fāṭimid petitions and contemporary archival practices invites us to rethink Chamberlain's claim that in the medieval Near East, "Individuals, households, religious bodies, and groups did not brandish documents as proofs of hereditary status, privilege, or property to the extent they did in the Latin West", or that "their strategies of social reproduction" were not "recorded, sanctified, or fought out through documents to the extent they were in Europe." Rustow concludes that:

> Writing and documentation, in short, pervaded the medieval Near East, even if those fully competent in their use and production were few. To deny this and assert instead a preference for perpetuating social hierarchies through biographical dictionaries is to make a virtue of a false necessity: there were documents, and more survived than is commonly understood.[12]

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9 Shahar and Agmon, "Introduction: Shifting Perspectives," 9–10.

10 On the period c.1000–1400 CE see É. Tyan, *Histoire de l'organisation judiciare en pays d'Islam* 2nd ed. 2 vols. (Leiden: Brill, 1960; first edition published in Paris, 1938–1943); C. Müller, *Gerichtspraxis im Stadtstaat Córdoba: Zum Recht der Gesellschaft in einer mālikitisch-islamischen Rechtstradition des 5./11. Jahrhunderts* (Leiden: Brill, 1999); and D.S. Powers, *Law, Society and Culture in the Maghrib, 1300–1500* (Cambridge: Cambridge University Press, 2002). On Islamic law "in action" see Stilt, *Islamic Law in Action*, which focuses on the "lived experience of the legal system" in medieval Cairo and Fustat.

11 M. Chamberlain, *Knowledge and Social Practice in Medieval Damascus: 1190–1350* (Cambridge: Cambridge University Press, 1994), 3.

12 Rustow, "A Petition to a Woman," 23.

Approached collectively and within a broader context, the varied and detailed research of Rustow, Rapoport and Shahar and Agmon thus problematises the idea that medieval "Islamic" legal institutions and processes of legal institutionalisation were somehow more "informal" or "substantively irrational," to borrow Weberian terminology, than their medieval European counterparts.[13]

In fact, I would go further and suggest that the recent shift towards analysing early and medieval Islamic "law in practice" – as identified explicitly by Rapoport and Shahar and Agmon – invites us to take a step back and think more precisely about what we mean when we talk about "institutions" and processes of "institutionalisation" with respect to legal systems, both past *and* present. In my own research, for example, I have attempted to question our modern, assumed idea of Classical and Postclassical Roman law as *necessarily* "formally" rational, centred on state structures, and institution-heavy – I will briefly return to this point below.

The remainder of this essay is divided into two parts: first, I explore how different theoretical frameworks frame different understandings of institutions and institutionalisation "in practice." Second, I briefly argue that the workings of Roman law and courts under the later Roman Empire should not be taken as an assumed model of full or "formal" legal institutionalisation, against which later practices – including the medieval Islamic – should be judged.

2 Institutions and Institutionalisation, between Theory and Practice

> Whatever else might be said about them, all institutions present themselves as authoritative rules for behaviour. To say that some structure, process or precedent has become institutionalised means, at a minimum, that there is now a way of doing things to which people are expected to conform.[14]

In the 2008 edition of his monograph, *Institutions and Organizations: Ideas and Interests*, W. Richard Scott (emeritus professor of sociology at Stanford) gives the following definition of institutions, a definition that acknowledges the "authoritative rules for behaviour" element highlighted in the quotation above,

13 For a revisionist perspective on Weber see D. Kennedy, "The Disenchantment of Logically Formal Legal Rationality, or Max Weber's Sociology in the Genealogy of the Contemporary Mode of Western Legal Thought," *Hastings Law Journal* 55 (2004), 1031–1076.

14 H. Heclo, *On Thinking Institutionally* (Boulder and London: Paradigm Publishers, 2008), 35.

whilst simultaneously moving beyond it: "Institutions are comprised of regulative, normative and cultural-cognitive elements, that, together with associated activities and [material] resources, provide stability and meaning to social life."[15] Scott goes on to explore how analytical frameworks developed by different scholarly traditions and academic disciplines tend to emphasise either the regulative, *or* the normative, *or* the cultural-cognitive elements of institutions. He thus also argues that different methodological frameworks and backgrounds necessarily inform different understandings of institutions and processes of institutionalisation. In order to demonstrate his argument, Scott produces the following table, which he terms the "Three Pillars of Institutions".[16]

Scott's table is obviously highly schematic, but it clearly highlights a distinct set of underlying assumptions and frameworks which can be seen to correspond broadly to a "regulative" approach to institutions as opposed to a "normative" or a "cultural-cognitive" approach. We shall take each one of Scott's "pillars" in turn.

Working from left to right on the table, Scott argues that economists, including economic historians, tend to emphasise the "regulative" element of institutions: in other words, they give prominence to the "explicit regulatory processes" of institutions, such as "rule-setting, monitoring, and sanctioning

	Regulative	***Normative***	***Cultural-cognitive***
Basis of compliance	Expedience	Social obligation	Taken-for-grantedness Shared understanding
Basis of order	Regulative rules	Binding expectations	Constitutive schema
Mechanisms	Coercive	Normative	Mimetic
Logic	Instrumentality	Appropriateness	Orthodoxy
Indicators	Rules Laws Sanctions	Certification Accreditation	Common beliefs Shared logics of action Isomorphism
Affect	Fear Guilt/ Innocence	Shame/Honour	Certainty/Confusion
Basis of legitimacy	Legally sanctioned	Morally governed	Comprehensible Recognisable Culturally supported

15 W.R. Scott, *Institutions and Organizations. Ideas and Interests* 3rd ed. (Thousand Oaks, California: Sage, 2008), 48.

16 Scott, *Institutions and Organizations*, 51.

activities." Institutions thus tend to be seen as "immutable cultural features of societies," which act to constrain and regularise individual behaviour.[17] Moving onto the second column of the table, Scott suggests that early sociologists – from Durkheim through to Talcott Parsons and Philip Selznick – as well as many contemporary sociologists and political scientists have instead tended to focus upon the "normative element" of institutions: "Emphasis here is placed on normative rules that introduce a prescriptive, evaluative and obligatory dimension into social life" (i.e., they refer to "values" and "norms").[18] According to Scott, sociologists in general are more likely to embrace a normative concept of institutions because they tend "… to examine those types of institutions, such as kinship groups, social classes, religious systems, and voluntary associations, where common beliefs and values are more likely to exist and constitute an important basis for order."[19] An emphasis on the "normative" elements of institutions also tends to stress how individual and collective action *determines* institutions (rather than how institutions determine individual and collective action). For example, in his 2006 monograph *Institutions and the Path to the Modern Economy*, the economic sociologist and historian Avner Greif takes issue with what he identifies as the dominant "regulative" trend in economic history and instead emphasises the fact that "individuals create institutions to serve various functions"; hence, argues Greif: "Institutions are best studied from a functionalist perspective that recognises that they are responsive to interests and needs."[20]

Scholars who typify Scott's third "cultural-cognitive" emphasis include the anthropologists Clifford Geertz and Mary Douglas; sociologists such as Peter Berger, Thomas Luckmann and Erving Goffman; as well as organisational theory scholars such as Paul DiMaggio, Walter Powell and Scott himself. According to Scott, this type of approach focuses upon "the shared conceptions that constitute the nature of social reality and the frames through which meaning is made."[21] Or, as one reviewer of Mary Douglas' *How Institutions Think* put it, this approach analyses "the set of cognitive classificatory frameworks within which choosers choose."[22] In this sense, it is comparable to

17 Op. cit., 52.

18 Op. cit., 54.

19 Op. cit., 55.

20 A. Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge: Cambridge University Press, 2006), 12.

21 Scott, *Institutions and Organizations,* 56.

22 C. Hood, "Review of Douglas, M., How Institutions Think," *Journal of Public Policy* 7 (1987), 93–95, at 93.

Bourdieu's concept of *habitus* and Giddens' "structuration" theory. Scott also suggests that a "cultural-cognitive" emphasis is a "distinguishing feature" of "neo-institutionalism" within sociology and organisational theory.[23]

If we now focus upon *legal* institutions and processes of legal institutionalisation in particular, we can see that they too can be approached through a predominant focus on "regulative" rules and enforcement; or through an emphasis on "normative" elements; or as part of a given society's cultural-cognitive structure (as in Scott's table above). Positivist traditions within nineteenth and twentieth-century Western legal scholarship tended to emphasise top-down "regulative" and "normative" elements of law and legal institutions, stressing in particular the coercive powers of states and state-like structures to impose law – and exploring the ways in which legal structures act to "constrain and regularise individual behavior." Emphasis was thus placed on law as "… the enterprise of subjecting human conduct to the governance of rules."[24] As the legal anthropologist Judith Scheele has argued, this kind of positivist, analytical, approach was usually based on the premise that "… law is imposed from above, and that the study of the 'legalisation' of a given society is the study of spreading state influence."[25] In contrast, recent socio-legal scholarship – for example that associated with the "law and society" movement and with "new institutionalism," as well as numerous different "law and anthropology" approaches – has begun to draw attention to the extent to which formal law itself should be understood as a culturally embedded social institution. Situated more towards the right-hand side of Scott's table and his third "cultural-cognitive" emphasis, this recent scholarship explores how both individual and group actors, operating within given socio-legal contexts, carry out practices that are simultaneously constrained (in some directions) and empowered (in others) by the existing institutional structure.[26] The existing institutional structure is thus constantly reproduced through social practice; however, (some) actors know how to "work" the socio-legal structures within which they operate, hence the structure itself is liable to change:

23 Scott, *Institutions and Organizations*, 56.

24 Lon Fuller quoted from A. Hunt, *Explorations in Law and Society. Towards a Constitutive Theory of Law* (New York and London: Routledge, 1993), 301.

25 J. Scheele, "Rightful Measures: Irrigation, Land and the *Sharīʿa* in the Algerian Touat," in *Legalism: Anthropology and History*, ed. P. Dresch and H. Skoda (Oxford: Oxford University Press, 2012), 197–228, at 198.

26 S.S. Silbey, "Making a Place for Cultural Analysis of Law," *Law & Social Inquiry*, 17 (1992), 39–48, at 44.

> … social structure is not abstracted from practice; instead it is created through daily activity. It is enacted and encoded in regular, seemingly uneventful, and routinized experiences. Being present in every situation, however, structure is also vulnerable to major changes of practice. Thus structure can be shaped and reshaped, enacted and created, while past practices nonetheless constrain that daily creation.[27]

Legal institutions, like other social institutions, thus operate "to constitute social life, rather than to regulate it."[28]

The argument that legal institutions constitute social life rather than (merely) regulating it does not imply, however, that law and legal institutions are just the same as other social institutions. Paul Bohannan clarified this fundamental point in a 1965 article entitled "The differing realms of the Law" – an article that he described as "an exercise in the anthropological investigation of jurisprudence."[29] According to Bohannan "law" is different precisely because it is recreated by "agents of society," acting repeatedly, within discrete *legal* institutions:

> Law must be distinguished from traditions and fashions and more specifically it must be differentiated from norm and from custom. A norm is a rule, more or less overt, which expresses "ought" aspects of relationships between human beings. Custom is a body of such norms – including regular deviations and compromises with norms – that is actually followed up in practice much of the time. All social institutions are marked by "customs" and these "customs" exhibit most of the stigmata cited by any definition of law. But there is one salient difference. Whereas custom continues to inhere in, and only in, those institutions which it governs (and which in turn govern it), law is specifically recreated, by agents of society, in a narrower and recognizable context – that is, in the context of the institutions that are legal in character and, to some degree at least, discrete from all others …[30]

Bohannan coined the phrase "double institutionalization" to refer to this specific process: "Law is … 'a body of binding obligations regarded as right by one

27 *Loc. cit.*

28 M.C. Suchman and L.B. Edelman, "Legal Rational Myths: The New Institutionalism and the Law and Society Tradition," *Law & Social Inquiry* 21 (1996), 903–941, at 936.

29 P. Bohannan, "The Differing Realms of the law," *American Anthropologist* 67 (1965), 33–42, at 33.

30 Bohannan, "Differing Realms of the Law," 34–35.

party and acknowledged as the duty by the other' which has been reinstitutionalised within the legal institution so that society can continue to function in an orderly manner on the basis of rules so maintained."[31] Legal institutions are created, reproduced and changed by social practice on a repetitive basis; yet Bohannan's recognition of their "doubly institutionalized" nature warns us against simply collapsing legal "rules" into social practices *per se*.[32]

3 Roman Law and Legal Institutions under the Later Roman Empire

Turning finally, and briefly, to Roman law and legal institutions under the later Roman Empire (4th–6th centuries CE). I would tentatively suggest that much research, past and present, on late Roman law has focused upon the left-hand side of Scott's chart – whilst virtually neglecting the right-hand side (there are of course exceptions, including work by Yan Thomas, John Crook and Marie-Thérese Fögen). Moreover, for various reasons – including the medieval European "rediscovery" and "reception" of Roman law, as referred to by Paul Hyams in the opening quotation – it is the "formal-rational" or "normative" aspect of Roman law that reverberates throughout the Western tradition. As the French psychoanalyst and historian of legal institutions, Pierre Legendre, stated: "The Western industrial legal mechanism is welded to the history of Roman law as a history of institutional reason."[33]

Historians of the later Empire tend to equate Postclassical law and legal institutions with Imperial lawgiving and centralised "bureaucratic" authority. Postclassical Roman emperors are understood as having "laid down the law" – an activity that seems to culminate in the legal codex-making projects of the

31 Op. cit., 36 (critiquing Malinowski's definition of law in his *Crime and Custom in Savage Society*).

32 Compare J.R. Searle, "What is an Institution?" *Journal of Institutional Economics* 1 (2005), 1–22, at 10: "The essential role of human institutions and the purpose of having institutions is not to constrain people as such, but, rather, to create new sorts of power relationships. Human institutions are, above all, enabling, because they create power, but it is a special kind of power. It is the power that is marked by such terms as: rights, duties, obligations, authorizations, permissions, empowerments, requirements, and certifications."

33 P. Legendre, "Hermes and Institutional Structures: An Essay on Dogmatic Communication," reprinted in *Law and the Unconscious: A Legendre Reader*, ed. P. Goodrich (London and New York: Macmillan, 1997), 153. See also D. Johnston, "The General Influence of Roman Institutions of State and Public Law," in *The Civilian Tradition and Scots Law. Aberdeen Quincentenary Essays*, ed. D.L. Carey Miller and R. Zimmermann (Berlin: Duncker & Humblot, 1997), 87–101, at 95.

emperors Theodosius II and Justinian I.[34] It is clear that the late Roman "state" was "not just one more 'actor' on the historical stage."[35] Nonetheless, if we analyse fourth- to sixth-century Roman legal institutions from the perspective of law as social practice (and I accept that this term needs considerable unpacking too), we are presented with a very different picture of legal institutions and institutionalisation. This picture would foreground (1) the socially constructed nature of Roman legal institutions; (2) the importance of "local" legal cultures and institutional practices and (3) the "situated" behaviour of individual actors. The starting point of this kind of approach to late Roman legal institutions is an attempt to reconstruct the field of late Roman legal practice from the perspective of individual actors, groups and communities, taking into account their respective "horizons of the possible": who they were, where they were and what kinds of indigenous legal ordering structured their lives – *as well as* their access to different types of formal Roman legal "knowledge," state-sponsored *codices* of legal texts and Imperial institutional structures.

Instead of working out from a legal-centralist model, this approach thus contextualises formal or "state" law as one – specialist – kind of social practice that needs to be understood within specific concrete contexts. As the anthropologist Marc Galanter states, it can be tempting to assume that (formal) state law is just *there*, with legal actors meeting "in a landscape naked of normative habitation"; yet "in many settings the norms and controls of indigenous ordering are palpably *there*, the official law is remote, and its intervention is problematic and transitory."[36]

4 Conclusion

In a 2005 essay on legal theory entitled "The new versus the old legal realism," the academic contract lawyer Stuart Macaulay suggested that we need to study law from the bottom up if we want to understand anything about it; he also argued, however, that we must be clear what we mean by "bottom up."[37] The same is true for the study of legal institutions and processes of legal institutionalisation. Even if we remain within the dominant paradigm of an

34 See the paper by Bernard Stolte in this volume, below.

35 Quotation from Heclo, *On Thinking Institutionally,* 62.

36 M. Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," *Journal of Legal Pluralism and Unofficial Law* 19 (1981), 1–30, at 23.

37 S. Macaulay, "The New versus the Old Legal Realism: 'Things Ain't What They Used to Be'," *Wisconsin Law Review* (2005), 365–403, at 390.

Empire-wide imposition of late Roman law, focusing upon the third "pillar of institutions" in Scott's table (above) allows us to explore how late Roman legal actors – both individuals and groups – reproduced, negotiated and reshaped formal legal structures within specific local contexts, at the same time as choosing (in so far as they were able) whether or not to engage with formal state-sponsored legal institutions.[38] From this perspective, Late Roman legal institutions, seen "from the bottom up," begin to look less like the highly formalised, "rational" institutions that we tend to associate with the modern West, and more like the diffuse, diverse and local *socio-legal* institutions that we are used to identifying with both the early medieval West *and* early medieval Islamic societies.

The theme of "codification" might seem, at first, to offer a quintessential top-down perspective on legal institutions: the establishment of formal, authoritative, legal rules by the centre – usually but not necessarily identified with the "state" – to be applied in practice in the periphery (with varying degrees of compliance).[39] As the papers that follow suggest, however, exploring the comparative development of "codified" law – *within* the framework of institutions and institutional practices – reveals a much more complex history than either "theory-practice" or "centre-periphery" models tend to suggest. The papers all demonstrate that there are different types of codification, some of which can be shown in operation within diverse socio-legal contexts *across* both the medieval East and West. Far from being a fixed and timeless legal concept, codification is thus revealed as part of much broader, historically specific, processes of socio-legal institutionalisation. As Heclo argues: "To think institutionally is to stretch your time horizon backward and forward so that the shadows from both past and future lengthen into the present."[40]

38 See further C. Humfress, "Law and Custom under Rome," in *Law, Custom and Justice in Late Antiquity and the Early Middle Ages*, ed. A. Rio (London: Centre for Hellenic Studies, 2011), 23–47; C. Humfress, "Laws' Empire: Roman Universalism and Legal Practice," in *New Frontiers: Law and Society in the Roman World*, ed. P.J. du Plessis (Edinburgh: Edinburgh University Press, 2013); and C. Humfress, "Thinking through Legal Pluralism: "Forum shopping' in the Later Roman Empire," in *Law and Empire*, ed. J. Duindam et al. (Leiden: Brill, 2013).

39 On authoritative non-state codification within medieval Islam see the paper by Maribel Fierro, below.

40 Heclo, *On Thinking Institutionally*, 109.

CHAPTER 3

The Ḥisba, the Muḥtasib and the Struggle over Political Power and a Moral Economy

An Enquiry into Institutions

Susana Narotzky and Eduardo Manzano

1 Introduction

In the origins of modern Medieval Studies in the nineteenth century, the German School of Law dealt extensively with medieval institutions. Authors like Karl von Savigny and Ernst Mayer underlined the role of institutions as expressions of the spirit of the nation, which was enshrined in the particular shape they had taken in the Middle Ages and was present in their later evolution. Since then, however, institutions have been left aside by medieval historiography. There are countless works that deal with particular institutions in history, but not so many on the implications of their existence as social agents in historical processes: Medievalists tend to consider institutions as a "given," something that naturally exist, as part of the Roman/German legacy or as milestones of the road to rationality and Western Enlightment that nowadays we represent.

In deep contrast with the relative lack of interest in institutions shown by historians, social scientists have produced a number of important contributions which view institutions as a tool of analysis, a reflection of the tensions between individual and collective; between individual freedom and moral (social) obligation. Marcel Mauss' ideas on institutions,[1] which included practice, representation and processes, underscored the processual aspect, rather

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1 M. Mauss (with Paul Fauconnet), in "La sociologie : objet et méthode," in "La Sociologie," extrait de la *Grande Encyclopédie*, vol. 30 (Paris: Société anonyme de la Grande Encyclopédie, 1901), defines institutions as "ensemble d'actes ou idées tout institué que les individus trouvent devant eux et qui s'imposent plus ou moins à eux." He adds that institutions are not static or immobile (that is the effect of abstraction): "En réalité l'institution ainsi conçue n'est qu'une abstraction. Les institutions véritables vivent, c'est à dire changent sans cesse…"

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than the more structural-functionalist aspect that came with the legacy of Durkheim.[2] Therefore, the concept of institution in the social sciences is linked to the idea of "society," the idea that there is a particular character to human social interaction, which produces organisation and continuity in terms of a regulated mutual dependency. Consequently, institutions are considered as "systems of established and prevalent social rules that structure social interactions" or as essential elements "in a more general concept known as social structure."[3] Their existence stresses the need for stability and the production of an environment of human interaction where uncertainty is kept under control.

As happens with other concepts of current social theory, though, this particular one seems to be ill suited for wider application in non-Western social contexts, where the peculiarities and intricacies of social shaping seem to defy our seemingly well-defined categories. As Tripp has explained, the idea of "society" is an intrinsically Western concept that developed as an analytical functionalist category in the nineteenth century.[4] Muslim intellectuals had to adapt it through its translation to pre-existing Islamic ideas. In this process, what seems to have proven crucial is the functionalist basis of a concept that seemed similar to the concept of an *umma* oriented toward the fulfilment of God's project. So the analytical category of institution is useful, but it must be remembered that it has a particular history both in European and Western thought and in the struggle of Eastern, Islamic polities to adapt to the increasing expansion of European political and economic power. In this paper we want to retain the analytical potential of the category "institution" but we will try to avoid the teleological Western drive that is usually attached to it.

2 Diverging Paths? Thoughts about a Metaphor

The New Institutional Economics School (NIE) introduced the idea that institutions were crucial to the development of the economy. This school of thought

2 E. Durkheim, in *De la division du travail social* (Paris: Presses Universitaires de France, 2007 [1893]), defines institutions as a norm of conduct which is legitimated by the authority of the group and whose function is to produce continuity of social relations. It is both a "social constraint" and a "moral constraint" that forces the individual to subordinate his private interests to the common good.

3 G.H. Hodgson, "What are institutions?" *Journal of Economic Issues* 40 (2006), 1–25.

4 C. Tripp, *Islam and the Moral Economy. The Challenge of Capitalism* (Cambridge: Cambridge University Press, 2006).

links Western economic growth to institutions reducing transaction costs in a context of scarcity, competition and exchange with anonymous partners. Institutions might not always be efficient for securing economic growth, and indeed they might prove inimical to economic development. However, Douglass North argues that the West produced institutions that were well suited to the reduction of transaction costs through the clarification of property rights and the enforcement of contracts. These institutions, moreover, proved to be flexible and adaptable to relative price changes, without losing their power to reduce uncertainty. But the question he poses then is: "How have we evolved such divergent patterns of social, political, and economic organization?"[5]

Many of North's followers have tried to pin down the path dependency of economic development, trying to find fault at particular institutions in societies that did not follow – or were at pains to adopt – the Western path. Kuran is an example of this with regard to Islamic societies, which he considers were late in adopting key institutions of the modern economy, particularly the regulations and organisational forms that were prevalent in the West.[6] This resulted in the proliferation of atomistic enterprises where co-operation was always meant to be temporary. The same idea is present in works like Shatzmiller's analysis of the *waqf* institutions, which she considers produced faulty delimitation and high levels of insecurity in property rights, due to a lack of stable procedures for state enforcement.[7] The *waqf* as public good remained tied to the donor's deed (*waqfiyya*) and to the legal decisions of the jurists in the community creating an ambiguous situation where the resource was neither private nor public property. The definition of *waqf* as the fulfillment of Qur'anic exhortations to make donations "in the name of God" (*fī sabīl Allāh*) makes it difficult to ascertain the aims of these donations, as some of them serve the common good but others can be considered as "pious deeds" of particulars; hence the necessity of studying this institution "in accordance with the specificities of a particular society during a particular time or period."[8] We might

5 D. North, "Institutions and Economic Growth: An Historical Introduction," *World Development* 17 (1989). 1319–1332, at 1325; idem, "The New Institutional Economics and Development" (1993), http://129.3.20.41/eps/eh/papers/9309/9309002.pdf, accessed June 10th 2011.

6 T. Kuran, "Why the Middle East Is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation," *The Journal of Economic Perspectives* 18 (2004) 71–90; idem, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2010).

7 M. Shatzmiller, "Islamic Institutions and Property Rights: The Case of the 'Public Good' Waqf," *Journal of the Economic and Social History of the Orient* 44 (2001), 44–74.

8 A. García Sanjuán, *Till God Inherits the Earth. Islamic Pious Endowments in al-Andalus (9–15th centuries)* (Leiden: Brill, 2007).

point out, moreover, that from the point of view of economic anthropology,[9] this conception of property (in particular the legal attribute of full alienability) is increasingly questionable (even in Western practice). Property is better understood as a bundle of rights with different values and relational sets of claimants that define the fuzzy contours of possible practice.[10] However, the main critique that can be addressed to the New Institutional Economists is that their assessment of "diverging paths" is predicated on a reified and a-political understanding of institutions. As Huri İslamoğlu has pointed out in relation to the constitution of private property in the Ottoman East during the eighteenth and nineteenth centuries, this institution was the result of the struggles of multiple actors (including state agents) in fields of power where the possibilities and the instruments of power were constantly recast and negotiated.[11] That is, institutions are constituted as sites of contention in between social actors differently situated in complex fields of social relations rather than as a reified notion of Law, a "technique of rule," administered by the state to minimise transaction costs. The constitutive forces of institutions have thus to be problematised from the start by enquiring what these "transaction costs" are:

> What institutionalists characterise as transaction costs may be described as confrontations, resistance, negotiations or deliberations among groups of individuals when confronted with a social reality premised on market interests. That is, transaction costs may point to the politics of the market or property in any given environment. In that sense, attempts at removing transaction costs amount to attempts at transcending politics and abstracting the market, state and law from politics or from power relations that are constitutive of them.[12]

New Institutional Economics poses two related questions that we would like to turn upside down: (1) how do institutions help or hinder economic development? and (2) which institutions help or hinder economic development?

9 See S. Narotzky, *New Directions in Economic Anthropology* (London: Pluto Press, 1997), 25–28.

10 *Property Relations: Renewing the Anthropological Tradition*, ed. C. Hann (Cambridge: Cambridge University Press, 1998).

11 H. İslamoğlu, "Politics of Administering Property: Law and Statistics in the Nineteenth-Century Ottoman Empire" in, *Constituting Modernity. Private Property in the East and West*, ed. H. İslamoğlu (London: I.B. Tauris, 2004).

12 İslamoğlu, "Towards a Political Economy of Legal Administrative Constitutions of Individual Property" in *Constituting Modernity*, ed. İslamoğlu, 6–7.

For these economists, the key institution for economic development is "private property," which in turn is sustained on contract relations, referred to a clear juridical system and backed by the capacity of state organisations to enforce them. New Institutional Economics starts from the premise that the desired objective of any society should be "economic development," as understood by neo-classical theory. Institutions are summoned into the picture only because rational choice and neo-classical theory do not work properly, because markets are not perfect, exchanges do not produce even results, and transaction costs are a reality of human interaction. In sum, institutions have to be considered because the social complexity of human interaction is not completely understood by economic theory.

Instead, we would like to explore the shape and values of a particular Islamic institution in its own terms rather than as an instrument to a pre-determined end. We will try to understand the mode of stabilisation it enabled and how it reduced uncertainty for those involved with it. In doing so, we also aim at showing the struggles that were part of its formulation as a particular bounded "form" of social relations which evolved in particular ways across time. We will look at the institution of the *ḥisba*, and in particular at its actual practice through the person/ office of the *muḥtasib*.

We will start by stressing the difference between organisations and institutions, opening a possible ground for going beyond the concept of institution. A frequent distinction between organisations and institutions is that between actual groups of persons regularly interacting in practice, and the rules, norms and codes of conduct that guide and constrain them.[13] As concepts, both institutions and organisations are opposed to individuals in that they are tied to the key idea of "society," a supra-individual organism. However, both concepts are

13 M. Abélès, in his "Pour une anthropologie des institutions," *L'Homme* 35 (135) (1995), 73, points to the dialectical relationship between institutions as norms and as organisations: "Le terme [institution] condense deux acceptions différentes: d'une part le processus qui conduit à produire des règles ; de l'autre l'organisation qui en découle et qui intègre ses membres dans un système de contraintes. L'instituant et l'institué sont deux faces d'une même réalité dans la mesure où la structure et ses agents secrètent sans cesse de nouvelles normes." B. Siegel, "Review of *The Institutions of Advanced Societies* by Arnold M. Rose (Ed.)," *American Anthropologist* 62 (1960), 155–156 points to the ambiguity of the term: "institutions are conceived as interrelated clusters of highly specific meanings and values pertaining to complex behaviour patterns within a culture. In both conception and usage institution may refer to either custom or group, to aspects of social structure or cultural organization. (…) It makes a difference if we treat religion as a body of beliefs and attitudes at one point, and as organized groups of human beings engaged in certain activities at another."

based on the idea that it is relations between humans that produce a society continuously. This is both a symbolic and material process, achieved through devising formal and informal norms and obligations, ethical frameworks and moral responsibilities, as well as organised forms of interaction. It is a process full of tension, engendering conflict and producing change. We would argue that this process is historically dialectic and cumulative as it always results in the build-up of a social knowledge that nurtures fresh conflict and change.

Bourdieu further distinguishes institutions from his concept of "habitus" in that the latter – a set of dispositions – is an incorporated, unconscious and non-formalised framework guiding action, whereas institutions are *processes of formalisation*: literally, *giving form*, representing norms and practices as bounded units. Institutions, here, are not corporate bodies or organisations.[14] They are fields of contending social forces, individual and collective, that are permanently changing but aim at producing a symbolic construct that produces stability through time. For Bourdieu, one of the main assets of institutions is the performative effect of form, defining boundaries and creating durable difference that will stabilise human behaviour.

Bearing all this in mind, our questions are: What *kinds* of institutions emerged during Islamic history? In what manner did they formalise? How did they create obligation and set the frameworks for action? Which dynamics of change resulted from the interactions between institutions, organisations and individual action? We want to explore the development and transformation of a particular mode of regulation, rather than the presence or absence of a particular institution, or the greater or lesser formalisation of its structure. Institutions of one kind might be absent whereas institutions of another kind are present (i.e. formal/informal, or political/religious, or territorial/genealogical, etc.), and the reasons why some appear in particular time-space frames is precisely what history has to reveal.

Let us take, for instance, the concept of *umma*, which is pivotal in Islamic theodicy, as shown by Qur'anic references to successive communities sharing the same religion (especially, Qur'ān VII, 34) and the later use of the term to define the Muslim community of believers. The emphasis on the idea of a final single community, which culminates salvation history, is further strengthened by the famous *ḥadīth*: "Truly my *umma* will never agree together on an error," which is always quoted as the main justification for the prevalence of

14 P. Bourdieu, "Les rites comme actes d'institution," *Actes de la recherche en sciences sociales* 43 (1982), 58–63 ; idem, "Habitus, code et codification," *Actes de la recherche en sciences sociales* 64 (1986), 40–44 ; idem, "La force du droit," *Actes de la recherche en sciences sociales* 64 (1986), 3–19.

"consensus" (*ijmāʿ*) as a source of law based on the agreement by the whole community abiding God's commands. This concept of *umma* differs strongly from its equivalent, the Christian *ekklesia*, whose original Greek meaning also translates the Hebrew *qahal* in the sense of "assembly," "congregation" or "community" in the Septuagint. There are only two occurrences of *ekklesia* in the Gospels (Matth. 16: 18 and 18: 17): the former states the role of Simon/Peter as the founder of the Church – "and I tell you that you are Peter and on this rock I will build my *ekklesia*" – the latter is mentioned in the context of Jesus' teachings on how to deal with sin: "if your brother or sister sins … tell it to the *ekklesia*." It is highly significant that from these scant references, which, contrary to concepts such as "kingdom of heavens," do not seem to be central to Jesus' message as conveyed by the Gospels, *ekklesia* grew rapidly in early Christianity into a very formal hierarchy with strict regulations and procedures. Therefore, and whereas the Christian *ekklesia* became a strongly hierarchical organisation structured around a privileged and distinctive elite, the notion of *umma* did not contemplate, in principle, the possibility of internal differentiation and privileged groups. This is very intriguing because it seems to point in the direction that processes of institutionalisation took a more formal shape in Christianity, whereas in Islam the idea of "community" (despite the internal differences, fragmentations and conjunctures) prevailed as the main narrative of self-representation.

Why this happened may be the result of a very particular historical process. The preservation of the *umma* as a powerful and legitimate institutional concept might well be the result of the success of the Ḥanbali Law School in ninth-century Baghdad.[15] The followers of this school were deeply engaged in a political and theological dispute over the issue of the createdness of the Qurʾān. The Ḥanbalis supported the divine essence of the Qurʾān and strongly opposed the idea that it had been created by God and thus could be modified by the successors of the Prophet Muḥammad. This notion favoured the limitation of the Caliph's power over holy law, while it simultaneously opened casuistic interpretation of the Qurʾān to any Muslim.[16]

15 The increasing strength of the Ḥanbali school and its co-optation by the ʿAbbāsid regime is supported by M. Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000), ch. 6.

16 This was opposed to Catholic Christianity where primacy as regards the interpretation of the sacred texts was attached to the hierarchy of the Church organisation (as the power of ex-cathedra teaching expresses). Hierarchical interpretation of the Holy Scriptures produced a strong "enclosure" of the meaning of the text (we have to wait until the Reformation to democratise interpretation of the Holy Scriptures in the West), and

As has been pointed out by Lapidus this outcome had two important effects (1) an actual separation of religion and state in Islamic societies that often pitted caliphal power against the authority of the *ʿulamāʾ,* and (2) the devolution of a large part of social and political power in local communities to the *ʿulamāʾ,* in their function as custodians of the truth and upholders of justice.[17] This "made the religious scholars the true leaders of the Muslim communities, and the religious communities independent agencies within the Caliphal order."[18] Everyday practice related individuals to the community of faith and to the polity in an overlapping manner. But the formalisation process of instituting difference and giving form was rooted first and foremost to the Qurʾān and the *Sunna*, which became the realm of the local religious scholars in the community that constrained or guided individual behaviour in terms of its law. "The *umma* itself was now an independent and differentiated entity shaped by religious beliefs – a social body whose continued existence was no longer bound up with its nominal chief [the Caliph]."[19] As religious belief was open to anyone, prestige and authority for the scholars came, in principle, from "popular" recognition of good practice among the *umma*. What this perspective shows is that even if authority and religion remained absolutely entangled and co-dependent in the Islamic realm, *power* was shared at different scales: in the community – *umma* – power rested on the *ʿulamāʾ* and the force of the Holy law to organise everyday life of the faithful; in the polity as a whole – including local settlements, urban and rural – power rested on military force and redistribution mainly through security and infrastructure provisioning. These two aspects of political power were not always congruent, as shown by the considerable deficit of legitimacy that a number of Islamic political formations had to face throughout history. So a strongly hierarchical and basically secular power structure was in permanent tension with a non-hierarchical power institution that appealed directly to God, the Qurʾān and the *Sunna* of the

fortified the organisation of the Church as opposed to the original idea of *ekklesia* as a community. This process, which was supported by the idea of Papal infallibility, strongly present in the dictates of the Gregorian reform, finally became dogma at the Vatican I council (1870) although not without opposition.

17 I. Lapidus, "The Separation of State and Religion in the Development of Early Islamic Society," *International Journal of Middle East Studies* 6 (1975), 363–385; idem, "State and Religion in Islamic Societies," *Past & Present* 151 (1996), 3–27; cf. also P. Crone & M. Hinds, *God's Caliph. Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986).

18 Lapidus, "State and Religion in Islamic Societies," 12.

19 Lapidus, "Separation of State and Religion." 383.

Prophet. We can see this tension develop in a very pragmatic form in the institution of the *ḥisba* and its personified expression: the *muḥtasib*.

3 The *Ḥisba*, the *Muḥtasib* and the Obligation to "Command the Good and Forbid the Evil"

The seventh Caliph of the ʿAbbāsid dynasty, al-Maʾmūn [813/833] seems to have been the first to replace the *ṣāḥib al-sūq* or *ʿāmil al-sūq* – a traditional a-religious figure controlling the marketplace that one finds in pre-Islamic times as well as in early Islamic times[20] – by a new figure, the *muḥtasib*, directly appointed by the State. The *muḥtasib* incorporated the traditional functions of market inspector with the more abstract rule of the religious institution of the *ḥisba*, based on the mandate of "commanding the Good and forbidding the Evil."[21] It is interesting to note that this occurred simultaneously with that same Caliph's struggle with rebels such as Sahl ibn Salāma and Aḥmad al-Naṣr who had organised their followers around the cry to "command the Good and forbid the Evil" in order to restore law and order in Baghdad, which had fallen into the hands of criminal groups, bandits and militia that preyed on the population. On the theological front, the traditionalists of the Ḥanbali School were also rebelling against al-Maʾmūn's attempts to reinstate Caliphal authority on religious matters through the doctrine of the createdness of the Qurʾān, where the Caliph was a living continuation of the Prophet, and preserved the gift of revelation and infallibility as a source of the law.[22]

The Ḥanbali School was also stressing the obligation that every Muslim had to perform the mandate of "*commanding the Good and forbidding the Evil*" as one of the central institutions of Islam. In this conjuncture, it is significant that the Caliph decided to appoint an official whose main function was to "*command the Good and forbid the Evil*" and embedded it in the figure of a civil officer that played a central role in the everyday public life of the community.

20 J. Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 55 n. 1, implies that in al-Andalus the Umayyads preserved for a longer period the traditional figure of the ʿāmil al-sūq as "'Abbāsid innovations did not immediately percolate into Islamic Spain." This is also the view of T. Glick, "Muhtasib and Mustasaf: A Case Study of Institutional Diffusion," *Viator* 2 (1972), 65. We totally agree with this suggestion.

21 Schacht, *Introduction to Islamic Law*, 25, 52; P. Chalmeta, *El 'señor del zoc' en España: edades media y moderna* (Madrid: Instituto Hispano-Árabe de Cultura, 1973), 346–349, 351; Lapidus, "Separation of State and Religion."

22 Lapidus, "Separation of State and Religion."

That is, the Caliph, through the *muḥtasib*, was struggling to keep control over the power that was being lost to the local *'ulamā'*, the proximate power over the community, through incorporation of the moral law, the *power from within* capable of disciplining the body and the mind. The Caliphs claimed "that only they and their appointed *muḥtasib* were responsible for 'commanding the Good and forbidding the Evil', [while] the popular preachers held that it was incumbent upon all Muslims to see to the implementation of the holy law."[23]

The *ḥisba*, the institution that enjoins every Muslim to "*command the Good and forbid the Evil*," was taking form as it was being struggled over by contending forms of power. The *muḥtasib*, at the heart of a commercial and urbanised society, was an attempt to keep a hold on "moral law" on the part of the Caliph. By the eleventh century, al-Māwardī was describing the major duties of the *muḥtasib* as secular, and referred to the "rights of people" involving mainly control of the accuracy of measures, the quality of production, the fairness in exchange, the setting of maximum prices in times of scarcity, or the physical maintenance of the market environment in terms of hygiene and construction norms.[24] However, these functions were associated from the start with other non-secular duties referred to as the "rights of God" such as making sure men went to prayer, abstained from alcohol, refrained from usury, behaved with modesty, etc., as well as duties referred to as "rights shared between God and people" controlling insult and abuse toward the powerless (children, servants, animals).[25] The social extraction of the *muḥtasib* seems to have differed historically and regionally: he could be a person from the merchant classes, he could belong to the "people of law," or he could be military as in the late Mamluk period in Egypt. Also his reputation is described variously as with

23 Lapidus, "Separation of State and Religion," 376. It is significant that a similar tension between the State and present day Islamic activist groups in Arab countries often revolves around the recuperation of the ḥisba institution as the core of Islam, and the reconfiguration of the muḥtasib, now almost exclusively upholding moral religious precepts: Salwa Ismail, "Religious 'Orthodoxy' as Public Morality: The State, Islamism and Cultural Politics in Egypt," *Critique: Critical Middle Eastern Studies* 8 (1999), 25–47; R. Meijer, "Commanding Right and Forbidding Wrong as a Principle of Social Action. The Case of the Egyptian al-Jama'a al-Islamiyya," in *Global Salafism. Islam's New Religious Movement*, ed. R. Meijer (New York: Columbia University Press, 2009).

24 Glick, "Muhtasib and Mustasaf"; A. Al-Raziq, "La ḥisba et le muḥtasib en Egypte au temps des Mamluks," *Annales Islamologiques* 13 (1977), 115–178; B.R. Foster, "Agoranomos and Muḥtasib" *Journal of the Economic and Social History of the Orient* 13 (1970), 128–144.

25 T.M. Al-Soliman, "Management and Supervision of Public Environments. The Role of the *Muhtaseb* in the Market of the Early Muslim Community," *Habitat International* 12 (1988), 43–52.

qualities of honesty and virtue and well respected by the community, or as a mostly corrupt agent of the state when office became subject to purchase.[26] Although of a lesser rank than the *qāḍi*, the *muḥtasib*'s functions also related to the law and its enforcement, but the emphasis seems to have been clearly on supervising the effective realisation of a set of moral obligations that should come *from within* the body and soul of every Muslim, not so much on imposing from without. This explains why, the domain included in his duty of observation is not so much an issue of "public" or "private," but an issue of the visible expression of the *ḥisba* within, as it affects the entire community.[27]

As regards the objective of the *muḥtasib*'s market duties, we might ask: What is the particularity and difference from other forms of market controllers existing elsewhere? How does the *ḥisba* as an institution transform the practice of controlling the market? What sort of framework of stability does it produce? What kind of flexibility does it allow and how does it tolerate or adapt to changing circumstances?

Chalmeta makes a thorough description of pre- and early Islamic market supervisors or inspectors including the Greek *agoranomos*, the Roman *aediles*, the Byzantine *eparch* and the Sassanid *vazarbad*.[28] He stresses that this was primarily a civil position related to the regulation and policing of the market, including a number of "technical" functions. Although he acknowledges that some of these positions included ritual aspects, these were by no means central to the office. Some of these positions seem to have been municipal offices (*agoranomos*, *aediles*) while others seem to have been of imperial institution (*eparch*).[29]

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26 B. Shoshan, "Grain Riots and the 'Moral Economy': Cairo, 1350-1517," *Journal of Interdisciplinary History* 10 (1980), 459–478; B. Shoshan, "Fatimid Grain Policy and the Post of the Muḥtasib," *International Journal of Middle East Studies* 13 (1981), 181–189; Al-Raziq, "La ḥisba et le muḥtasib."

27 Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*; R. Mottahedeh & K. Stilt, "Public and Private as Viewed through the Work of the Muḥtasib," *Social Research* 70 (2003), 735–748.

28 Chalmeta, *El 'señor del zoc'*, 245–296.

29 Chalmeta seems to point at an Hellenistic origin of the position of ṣāḥib al sūq: *El 'señor del zoc'*, 292, and Chalmeta, *El zoco medieval*, 111. However, different forms of market supervision are widespread: R.J. Bromley and R. Symanski, "Marketplace Trade in Latin America," *Latin American Research Review* 9 (1974), 3–38, for Latin America; *Markets in Africa*, ed. P. Bohannan and G. Dalton (Evanston, IL: Northwestern University Press, 1965 [1962]); and C. Meillassoux, *The Development of Indigenous Trade and Markets in West Africa* (Oxford: Oxford University Press, 1971), for Africa. See also for a debate on the origins and functions of the office of muḥtasib: B.R. Foster, "Agoranomos and Muḥtasib,"

In any case, we can see some important differences if we compare three treatises referring to market regulation: (a) the Byzantine Book of the Eparch of the tenth century,[30] (b) an early regulation book written by a certain Yaḥyā b. ʿUmar (828–901) who was born in al-Andalus, but spent most of his life in Qayrawān[31] and (c) the *ḥisba* treatise of al-Saqaṭī of the early thirteenth century.[32] Although the three are occupied with the regulation of market practices, upholding what might be called "good practice" in order to control excesses that might be harmful to the community and to the continuity of exchange – therefore including a moral dimension always necessary as exchange needs an environment of trust and stability in order to minimise transaction costs – only the *ḥisba* treatise presents the office duties as intrinsically holding a religious character.

Thus, we can see a progression (not of a chronological type) between these treatises:

a. The "Book of the Eparch" has a short proemium in which Emperor Leo VI (886–912) remarks God's giving of the Tables of the Law as a means to foster fairness in human transactions and to prevent the supremacy of the powerful upon the weak; therefore the emperor has decided to formulate a number of dispositions gleaned from the Law in order to guarantee that no one oppresses the other. What follows, though, is a mere technical regulation of production standards and exchange norms regarding the activities of notaries, money-lenders, bakers, perfumiers, butchers, etc.
b. The ninth-century North African treatise appears as a compilation of consultations by a *ṣāḥib al-sūq* to Yaḥyā b. ʿUmar, where the former wants to ascertain that his controlling practices do not deviate from religious

Journal of the Economic and Social History of the Orient 13 (1970), 128–144; Glick, "Muhtasib and Mustasaf"; Al-Raziq, "La ḥisba et le muḥtasib"; and W. Floor, "The Office of Muḥtasib in Iran," *Iranian Studies* 18 (1985), 53–74.

30 See M. Kaplan, "Les artisans dans la société de Constantinople aux VII–XI siècles," in *Byzantine Constantinople: Monuments, Topography and Everyday Life*, ed. N. Necipoglu (Leiden: Brill, 2001), 245–260; A. Kazhdan, "State, Feudal, and Private Economy in Byzantium," *Dumbarton Oaks Papers* 47 (1993), 99; *The Book of the Eparch*, ed. I. Dujcev (London: Variorum, 1970).

31 E. García Gómez, "Unas 'Ordenanzas del zoco' del siglo IX: Traducción del más antiguo antecedente de los tratados andaluces de 'ḥisba' por un autor andaluz," *Al-Andalus* 22 (1957), 253–316.

32 P. Chalmeta, "El Kitāb fī ādāb al-ḥisba (Libro del buen gobierno del zoco) de al-Saqaṭī," *Al-Andalus* 32 (1967), 125–162, 359–397; 33 (1968), 143–195, 367–434.

principles. Questions addressed to Yaḥyā vary from significant to random. Here are a few examples: is it lawful to set up fixed prices for bakers and other food merchants? What do we do with watered milk? And with adulterated foodstuffs? In the latter cases the answer is the same for both questions: give it to the poor. And what about someone who is invited to a party with people playing musical instruments? And women entering baths? And women crying at funerals? And women wearing certain noisy clogs? Lack of observation of the rules of the *ḥisba* may result in the expulsion of wrongdoers from the *sūq*.[33]

c. The later work of al-Saqaṭī presents a model of the practice of market supervisor from within a position that has integrally incorporated the religious mandate as its main objective.[34] It is as if the objective of the office has been turned inside out: going from an external control of practices in order to keep moral relations in the market, to an internal control of individual morality in order to control the morality of market practices. Al-Saqaṭī, like other authors of treatises of *ḥisba*, considers that the institutional framework addresses the personal responsibility of each individual toward the community under the law of God. It hinges on the simultaneous production of the person as an individual member of the *umma* (identity) but also as an upholder of the Good that is at the basis of the community and its continuity.

Therefore, we have seen three models of controlling the market, which have a number of elements in common, but also radical differences. The first model, represented by the Book of the Eparch, is a medieval translation of the market supervisor of the ancient world: the eparch's functions, as described in this source, were not very different from those held by *aediles* and *agoranomoi*.[35] The second model brings *ḥisba* into the scene. The result is an amalgamation of supervisory market practices with new elements drawn from a complex tradition which is Islamic in its formulation, but draws from a complex background of customary practices usually defined as '*urf*'. Rightly defined as reflecting an early stage of "Islamic institutionalisation"[36] the ninth-century

33 García Gómez, "Unas 'Ordenanzas del zoco'," 270, 274, 276, 277, 281, 296.

34 Chalmeta seems to refuse the possibility that religious moral norms might be simultaneously technical regulatory practices or, in other words, that economic practices and regulations might be seen as the expression of religious obligations: "El Kitāb fī ādāb al-ḥisba," 32 (1967); *El 'señor del zoco'*; and *El zoco medieval.*

35 See also Foster, "Agoranomos and Muḥtasib."

36 Chalmeta, *El zoco medieval*, 473.

North African treatise stipulates the norms and rules that regulate the affiliation to the *sūq* community and by extension to the *umma*. The third model reflects a mature stage of Islamic institutionalisation in which private morality determines public practices. This interpretation is consistent with recent approaches to the notion of the private sphere, which stress the idea that in Islamic thought, "privacy is allowed so long as, and to the extent that, it promotes social and religious communal life."[37]

Here let us make a digression relating to the exceptionality of al-Andalus in relation to the late appearance of *muḥtasib* as the actual term used for the market inspector. Chalmeta is very insistent in stressing the "technical" aspect of the *ḥisba* treatise of al-Saqaṭī (first quarter of the thirteenth century) and its a-religious, merely civic objective, although Chalmeta points that "one of the problems of the text is the use of the term *muḥtasib* where we would have expected the term of *ṣāḥib al-sūq.*"[38] Elsewhere, he insists that the term *muḥtasib* was used only for individual fanatics who brought their claims against other people on moral and religious grounds (as opposed to contractual grounds) in front of the court of a judge.[39] However, he does admit the progressive "Islamisation" of civic offices mainly after the ʿAbbāsid period in the Oriental realm and after the Almoravids in al-Andalus. In any case the author stresses the fact that these late *muḥtasib* were making decisions according to custom (*ʿurf*) and were not knowledgeable of *fiqh*.

A different view is put forward by Müller:[40] "After the loss of the Eastern Caliphate, Umayyad emirs [in al-Andalus] continued the old administrative system regardless of changes in the ʿAbbāsid Caliphate. As one of the few very obvious differences, the market inspector was still called *ṣāḥib al-sūq*, and not *muḥtasib* as in the rest of the Islamic lands." The office of the inspector of the market (*ṣāḥib al-sūq*) seems to have been later connected to additional small police functions in the *ṣāḥib al-shurṭa wa l-sūq* in tenth-century Cordoba.[41] By the eleventh century a juridical function was often attached to the office of market inspector. The *ṣāḥib al-aḥkām* was a non-qāḍi judge dealing with all sorts of issues: he "dealt with contract law in commerce, marriage and divorce,

37 E. Alschech, "'Do Not Enter Houses Other than Your Own': The Evolution of the Notion of a Private Domestic Sphere in Early Islamic Thought," *Islamic Law and Society* 11 (2004), 291–332, at 329.

38 Chalmeta, "El Kitāb fī ādāb al-ḥisba," 145.

39 Chalmeta, *El 'señor del zoc'*, 403–408, 426.

40 C. Müller, "Administrative Tradition and Civil Jurisdiction of the Cordoban' ṣāḥib al-aḥkām (1)," *Al-Qantara* 21 (2000), 57–84, at 60.

41 Ibid., 65–68.

as well as with all kinds of disputes within families, between neighbors and over real estate."[42] Contrary to Chalmeta's idea, this new aspect of the *muḥtasib*'s office seems to have been strongly based on the knowledge of *fiqh*: "The market inspector adopted the legal opinions of these eminent scholars of Maliki *fiqh*. His jurisdiction was not regarded as purely secular or administrative in quality."[43] During the Almoravid period the *muḥtasib* appears as an office subordinated to the *qāḍi*, who named him with the acknowledgement of the ruler. Moreover "the *muḥtasib* should only judge according to the obligatory rules of the divine law."[44] It seems probable, however, that the legitimacy of private *muḥtasib* (not official appointees but just individual members of the *umma*) to behold justice co-existed with the public office of *muḥtasib* for a long time if not always:

> The Almoravids introduced the office of '*muḥtasib*' as superintendent of markets and public moral in al-Andalus at the end of the 11th century. Before that the market inspector of Cordoba was never called *muḥtasib*. (…) In the middle of the 5th/11th century, a claimant was called *muḥtasib* when he had no personal or contractual legal claim against the defendant but based the suit on a violation of public order or morals: he acted privately in pursuit of the Koranic *ḥisba* maxim "to promote good and forbid evil."[45]

We do not see a fundamental difference between what occurs in ʿAbbāsid times in the East, and what is taking place in al-Andalus with the Almoravids, which can be summarised as follows: (1) a struggle between different expressions and loci of power, and (2) the embeddedness of a secular moral economy into a strongly religious discourse and practice. The recurrence of the same issues at different times and places (the early ʿAbbāsid caliphate, Almoravid al-Andalus) is a strong indicator of the perennial social tensions that this particular institution embodied.

As a matter of fact, it seems clear to us that what becomes thoroughly embedded in the market, through *ḥisba*, is the moral aspect of all economic behaviour from production quality standards to exchange. Therefore *ḥisba* creates a particular brand of *moral economy* that becomes hegemonic and stabilises economic life until the eighteenth century in what Shechter has defined

42 Ibid., 74.
43 Ibid., 75.
44 Ibid., 71.
45 Ibid., 72.

for the Ottoman polity as a "good-enough" economy, whose objective was not growth and accumulation, but a market-welfare system, an "economic system that partially stifled competition (and efficiency/growth) for the sake of economic stability and a certain level of equity for those established within its boundaries."[46] Shoshan points to the position of the *muḥtasib* in Fāṭimid and Mamluk Egypt as the one expected to keep a "just" price for grain and bread, becoming the object of attacks by crowds during grain riots when expectations of paternalism on the part of rulers were momentarily disappointed.[47]

It would be wrong to interpret *ḥisba* as being the result of ignorance of what has developed into mainstream neo-classical economic laws. On the contrary, there seems to have been a thorough knowledge of economic mechanisms such as price-formation in medieval Islam. Two different approaches to economic practice – one praising the pursuit of wealth for its own sake, the other subjecting economy to the moral economy of *ḥisba* – seem to have developed.[48] However, the ethical approach seems to have become manifest by the early fourteenth century. Ibn Taymiyya, a ḥanbalite scholar in Damascus and Cairo (1263–1328), explicitly recognises the social role of *ḥisba*: "the welfare of the people of the country can be achieved through commanding the good and forbidding the evil. The well-being of the people, their economic well-being, lies in obedience to God and his Prophet, which is possible only by enjoying good and forbidding evil."[49]

It is within this landscape of prevalence of the "moral economy" that the *muḥtasib* needs to be understood. He was frequently chosen from the merchant class, but the *ʿulamāʾ* seem also to have been predominantly from the merchant classes or at least prone to make a self-representation of themselves as emerging from urban classes and as reluctant to follow the commands of political power (*inqibaḍ ʿan al-sulṭān*).[50] This seems an interesting

46 R. Shechter, "Market Welfare in the Early-Modern Ottoman Economy – A Historiographic Overview with Many Questions," *Journal of the Economic and Social History of the Orient* 48 (2005), 253–276, at 254.

47 Shoshan, "Grain Riots"; idem, "Fatimid Grain Policy."

48 H. Hosseini, "Understanding the Market Mechanism before Adam Smith: Economic Thought in Medieval Islam," *History of Political Economy* 27 (1995), 539–561.

49 Ibid., 556. Tripp, *Islam and the Moral Economy*, also underscores the centrality of the community's welfare as an injunction to "tame" capitalist oriented forms of growth in Muslim polities, in contemporary periods.

50 See M. Hodgson, "The Role of Islam in World History," *International Journal of Middle East Studies* 1 (1970), 99–123; M. Marin, "Inqibāḍ ʿan al-sulṭān. ʿUlamāʾ and Political Power in al-Andalus," *Saber político y saber religioso en el Islam* (Madrid: AECI, 1994); but also a critique of this ideological construct for the case of Umayyad al-Andalus in E. Manzano,

sociological/ideological point, for it underscores the proximity and entanglement of their positions and of material and immaterial resources in practice, that is, beyond the written law. However, what seems crucial to the understanding of the particular type of institutional framework created through *ḥisba* is the contractualist and casuistic approach to the law of Islamic jurist scholars.

Islamic legal institutions follow the principle of personality (as opposed to the principle of territoriality generally applied in modern nation-states). Therefore the law is applied to individuals through their personal adscription to the *umma*. This system will become challenged during the nineteenth century as Muslim polities tried to re-define themselves as modern nation-states, opening to economic treaties and capitalist transformations.[51] In the meantime, the stress on individual moral responsibility as a form of collective responsibility toward the *umma's* well-being, favoured the highlighting of individual contract as the main form of instituting exchange relations.[52] Moreover the ideological framework of equality of believers in the *umma* also favoured contract as a moral form of establishing responsibility. But contract and personal responsibility were not abstract universal concepts; they were concrete notions tied to the honour and position of particular individuals and their inseparable responsibility towards God and the *umma*. The *sharīʿa* is highly contractualist and well adapted to commercial transactions, but individuals are not so much answering for their actions as for their person, what kind of moral person they are in regard to God and the collectivity of Muslims and how they uphold their moral obligations. It is highly significant in this regard that present day "Islamic economy" is based on the "Islamic personality" of the individual Muslim, the "*homo islamicus*," "as both a moral and an economic agent."[53]

It is in this context that the *muḥtasib*'s role in the market tries to emphasise the moral aspect of contracts in transactions, and tries to channel contracts

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Conquistadores, emires y califas. Los Omeyas y la formacion de al-Andalus (Barcelona: Crítica, 2006), 373: the *'ulamā'* tended to become a class apart, in many cases hereditary and their independence from rulers was also questionable. But what is at stake here is not so much the actual shape of this particular class, but rather its means of legitimization.

51 H. Liebesny, "Comparative Legal History: Its Role in the Analysis of Islamic and Modern Near Eastern Legal Institutions," *American Journal of Comparative Law* 20 (1972) 38–52; İslamoğlu, "Politics of Administering Property."

52 M. Acién, "Sobre el papel de la ideología en la caracterización de las formaciones sociales. La formación social islámica," *Hispania* 58 (1998), 915–968.

53 Tripp, *Islam and the Moral Economy*, 122–123, 135, 199; B. Maurer, *Mutual Life, Limited. Islamic Banking, Alternative Currencies, Lateral Reason* (Princeton: Princeton University Press, 2005), 36.

into the framework of general well-being. Because of the contractual aspect, however, there was a wide range for adapting and transforming the actual forms of transactions, both in light of supply and demand or technological transformations that would endanger lawful merchant profits, and in light of crises that endangered general well-being. In fact, neither the *sharīʿa* nor the *ḥisba* were rigid institutional frameworks and they allowed for a wide range of transformations.[54]

Ignasi Terradas has shown that in vindicatory justice "the offence is meaningful in reference to the rights and duties of reciprocity exercised between people as members of collectives that define the juridical aspect of their expectations and conducts, not in reference to a general code that confronts the individual with entire society."[55] This helps to explain the casuistic approach of the *sharīʿa* in general and of the *ḥisba* in particular, and the ultimate knowledge and authority of the Qurʾān, although within the legal pluralism allowed by the schools of Law.[56] The *fatwas* of the *muftis*, as well as the guiding vigilance and sanctions of the *muḥtasib*, contributed to incorporate permanently the holy tradition in the everyday life of each individual Muslim and thus continuously transform their practical value. Flexibility of contract and economic behaviour were therefore linked to the enactment in practice of the unique moral text defining the identity of the person as a member of the community.[57]

The moral configuration of the *umma* became a form of memory that was permanently re-enacted and vivified, as opposed to the memory of other institutions which tended to foster historical archives as memory repositories: this may explain why the kind of documents preserved may be very different – chronicles, property deeds, *waqfiyyas* – and why they have not the

54 Tripp, *Islam and the Moral Economy*; İslamoğlu, "Politics of Administering Property," "Towards a Political Economy of Legal Administrative Constitutions of Individual Property."

55 I. Terradas, *Justicia Vindicatoria* (Madrid: CSIC, 2008), 355.

56 Hodgson, "The Role of Islam in World History"; N. Mohammed, "Principles of Islamic Contract Law," *Journal of Law and Religion* 6 (1988), 115–130; J. Schacht, "Islamic Law in Contemporary States," *American Journal of Comparative Law* 8 (1959), 133–147; G.M. Badr, "Islamic Law: Its Relation to Other Legal Systems," *American Journal of Comparative Law* 26 (1978), 187–198; Liebesny, "Comparative Legal History"; Terradas *Justicia Vindicatoria.*

57 For a fascinating account of the dynamic conception of sharīʿa as applied to present-day Islamic banking, and the casuistic debate that it produces, see Maurer, *Mutual Life, Limited*, 68–75.

perennial character that we tend to associate with institutions and their registers.[58]

What happens, then, when a sacred book or a sacred tradition are instituted as the permanent and unchanging repositories of law, in past, present and future times, but at the same time are endlessly transformed in practice, therefore never becoming objects of the past that can be put to rest in a repository? This is the case of the Qurʾān, the *Sunna* and the *ʿusūl al-fiqh* or principles of law. These objects constitute what Godelier, following Weiner, described as elements which cannot be given or sold but have to be kept in order to produce identity and continuity for the community in cosmological terms.[59] These types of inalienable "objects of memory" are re-configured materially every time they are put into practice [case law]. They are not so easily reified, so that their value depends on the political and social institutions that give them form in practice [Law Schools, *ʿulamāʾ*, etc.]. They do not have an "independent" value so to speak because, as objects of constant memory and re-elaboration, they are never separated – alienated – from the experience of practice.

4 Ḥisba and Moral Economies

At this point it becomes clear that the finality of the regulation system of the institutions we have been looking at is linked to social welfare and practice in such a manner that it becomes extremely difficult (if not impossible) to separate individual, personal forms of responsibility, from communal ones. In a very central way the *ḥisba* institution as enacted by the *muḥtasib* in the market anchors the pursuit of individual profit to the welfare of the community, and it backs this practice with a command that comes directly from God and is unquestionable. If we compare this to the forms of moral economy that have been described for the West and that E.P. Thompson's masterful articles describe in their demise,[60] we can see how enduring the Islamic moral economy has been, despite the tension imposed by the coercive nature of political and social power. It has been able to accommodate flexibility while preserving

58 E. Manzano, Introduction, in *From al-Andalus to Khurasan. Documents from the Medieval Islamic World*, ed. P.M. Sijpesteijn *et al.* (Leiden: Brill, 2007).

59 M. Godelier, *L'énigme du don* (Paris: Fayard, 1996); A.B. Weiner, *Inalienable Possessions* (Berkeley: University of California Press, 1992).

60 E.P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past and Present* 50 (1971), 76–136; idem, "The Moral Economy Reviewed," in *Customs in Common* (New York: The New Press, 1993).

(some say as a mere fiction) an inalienable moral core that has persisted in many different forms up to the present.[61] This is not to say that this "moral economy" is better in absolute terms than what can be termed as the "moral economy" of capitalism (private property, competition and growth as the better way of enhancing general well-being: "private vices, public virtues") in turn opposed to a paternalist "moral economy" preceding it:[62] food riots were also a fact of the Islamic realm early on.[63] Neither have we tried to make an enquiry into the intricacies of social and political power instrumentalising elements of the moral economy of the *umma* in order to establish its rule. We just want to point at what seems to have been the main and ideal objective pursued by a core economic institution, an objective that serves to give form to what will be conceived as "good" or "bad" accordingly. We have observed this institution as producing form, bounding activity, and binding the individual and the community in a simultaneous search for well-being, yet adapting and maintaining a necessary flexibility, which makes us aware of interesting present-day developments.[64]

The concept of "moral economy" was first proposed by Thompson as a means to explain the logic of the food riots in England in the eighteenth century.[65] It described a set of reciprocal obligations and responsibilities embedded in a "paternalist," patron-client economy that could come at odds with the effects on local subsistence of increasingly open markets and free trade. The framing of social justice in a particular historical context became the clue to explaining transforming patterns of resource distribution (food) that were rejected by large groups of people. In "The Moral Economy Reviewed" (1993), however, Thompson admitted that the concept now covered a wider range of issues. He warned against the simplistic opposition between a "market economy" and a "moral economy," a recommendation that still stands as good advice today. Indeed, scholars have alerted us to the fact that capitalist

61 Tripp, *Islam and the Moral Economy*; Maurer *Mutual Life, Limited.*

62 S. Popkin, "The Rational Peasant. The Political Economy of Peasant Society," *Theory and Society* 9 (1980), 411–471.

63 Shoshan, "Grain Riots."

64 Some Muslim scholars are re-interpreting these values as useful for the development of post-capitalist economies, from two points of view: (1) increased contractualism in the face of the waning power of the state in the wake of present-day neoliberalism, and (2) increasing need to "moralise" or "tame" growth objectives in order to enable "sustainability": Tripp, *Islam and the Moral Economy*; and S. Mortazavi, "Islamic Economics. A Solution for Environmental Protection" (paper presented at Oxford University colloquium on *Trade, Growth and the Environment*, August 8–13, 2004).

65 "The Moral Economy of the English Crowd."

societies (market economy) also stand on moral grounds, in the sense that they do need norms and standards of good practice and are dependent on a particular idea of what is good and best for society as a whole: the allocation of goods and services through the market.[66]

The New Institutional Economics with which we opened the paper is an example of the morals of capitalism. Some scholars, moreover, have pointed to the fact that non-capitalist moral obligations between landlords and peasants were often ideological means to cover extreme exploitative practices.[67] Thompson was pointing to the conflict emerging at a period of change in what appeared as the moral obligations of the powerful. An economy instituted around "paternalistic" norms of mutual obligation that made the powerful morally responsible for the well-being of the underlings was being replaced by an economy where ties of responsibility for the common people had disappeared from the moral kit of those involved in commercial activities, now solely oriented by the objective of individual profit-making. In the West, the rise of this new morality of the economy (the capitalist morality) became unstoppable. In the East, however, as Shoshan shows for the food riots in Cairo between 1350 and 1517, these were linked to short-term discontinuations of paternalistic practices that shattered the crowds' expectation of "just" food prices.[68] In the long-term, however, the resilience of the moral economy instituted by the *ḥisba*, produced different possible articulations of economic development from those in the West, up to the present.[69]

So, in comparing institutions and their effect in regard to the economy, we should start by assessing what actual *form* is being created, what is the field of contending social forces at play and, finally, what is the purpose of the framework that emerges as a stabilising guide of behaviour. What is being reproduced through a particular institution? What structure, what stable differences are being produced? How are sites of struggle being defined? The moral economy of the English crowd in the eighteenth century gave way to the central institution of capitalist economy – private property – as a bounded form, an institution inscribed in positive law producing stability and reproducing a particular relation between labour and capital. This breaking of the old moral

66 V.A. Zelizer, "Beyond the Polemics on the Market: Establishing a Theoretical and Empirical Agenda" *Sociological Forum* 3 (1988), 614–634; W.J. Booth, "On the Idea of the Moral Economy," *American Political Science Review* 88 (1994), 653–667.

67 P. Bourdieu, *Le sens pratique* (Paris: Editions de Minuit, 1980); Popkin "The Rational Peasant."

68 "Grain Riots."

69 Tripp, *Islam and the Moral Economy*; Maurer, *Mutual Life, Limited.*

economy was expressed in the process of "enclosures" and the struggles that surround it. The *ḥisba* as an institution giving form to another mode of moral economy produced resilience to this transformation, although it did not preclude its appearance.[70]

5 Conclusion: On Authority and Power

Islam and Christianity developed different notions of religious authority: in Islam, for example, consensus or *ijmāʿ* was recognised as part of religious institutions – as endorsed by the saying of the Prophet: "My community will never agree on an error" – whereas in the West the emphasis seems to have been on hierarchical organisation. Obviously this does not mean that hierarchies did not exist within Islam. We could address this by considering the Weberian expression of authority in terms of a sacred (the Qurʾān) and a charismatic authority (the *ʿulamāʾ*) vs. a personification of the sacred (the pope) and a more bureaucratic or organisational authority (the Church). But this does not enlighten us as to how power was exercised, what were the stakes of domination, and how legitimisation was produced at different scales through different modes of institutionalisation. Therefore, we will take here a foucauldian perspective, taking into account the distinction that Foucault made between two different "economies of power"[71] (1) power over the territory, over land and resources and people: sovereign power or the power of the sovereign to exercise force; and (2) a power from within, disciplinary power over the bodies through what he calls the techniques of the self, which works together with the institution of Law. This second mode of exercising domination he sees as a condition for the development of industrial capitalism, liberalism and bourgeois society. What is underscored in this transformation is the "economy" (increased productivity) of power that is enabled through the new dispositions. In the case we are trying to analyse here, it would be interesting to think about these economies of power: that is, what forms of domination are enabled under one power mechanism or polymorphy of power and under the other.

It might well be in fact that the medieval Muslim system (*contra* the Oriental Despotism thesis) is more similar to the "bourgeois-liberal" disciplinary system that Foucault describes for eighteenth- to nineteenth-century Europe and under its particular historical circumstances it might be more "productive" for

70 İslamoğlu, "Politics of Administering Property."

71 M. Foucault, "Cours du 7 janvier 1976," in *Dits et Écrits II, 1976–1988* (Paris: Gallimard, 2001 [1977]), 160–189.

domination. The issue for Foucault is the progressive displacement from the question "Comment gouverner le plus possible et au moindre coût possible?" to the resolution of another question: "pourquoi faut-il gouverner?" that is, what renders licit the exercise of power: "The idea of society is what enables the development of a technology of government on the basis that in itself it [government] is 'too much,' 'in excess' – or at least that it adds up as a supplement to which one has to always ask if it is necessary and how it is useful."[72] What we find in the development of the tensions of power between the Caliph and the '*ulamā*' is also the tension between the two economies of power that Foucault underscores: the Caliph organises power over the territory and underlines the power of the sovereign to exercise force; the '*ulamā*' support the institution that exercises power from within and underscore the power of the *Sunna* as a source of law. The law which is a supreme moral injunction to just behaviour, moreover, is one that every person has to literally incorporate in the self, where every individual is made directly responsible for the well-being of the community: "Command the Good and forbid the Evil." It is from the authority of the *umma* as a community of faith that the authority of the Caliph can be challenged as being "in excess."

This slogan, which is found in a handful of places in the Qur'ān, was produced as a proper institution in the ninth century by the Ḥanbali School of Law as a means to keep ultimate authority and power close to the community and tied to its needs, as opposed to the expansionist interests of the Caliph.

72 M. Foucault, "Naissance de la biopolitique," in *Dits et Écrits II, 1976–1988* (Paris: Gallimard, 2001 [1979]), 818–825, at 820; in his analysis of the different modes of governmentality, the "Raison d'État" and liberalism, Foucault here proposes: "La réflexion libérale ne part pas de l'existence de l'État, trouvant dans le gouvernement le moyen d'attendre cette fin qu'il serait pour lui-même; mais de la société qui se trouve être dans un rapport complexe d'extériorité et d'intériorité vis-à-vis de l'État. C'est elle – à la fois à titre de condition et de fin dernière – qui permet de ne plus poser la question: comment gouverner le plus possible et au moindre coût possible? Mais plutôt celle-ci: pourquoi faut-il gouverner? C'est-à-dire: qu'est-ce qui rend nécessaire qu'il y ait un gouvernement et quelles fins doit-il poursuivre, à l'égard de la société, pour se justifier d'exister. L'idée de société, c'est ce qui permet de développer une technologie de gouvernement à partir du principe qu'étant déjà en lui-même 'de trop', 'en excès' – ou du moins qu'il vient s'ajouter comme un supplément auquel on peut et on doit toujours demander s'il est nécessaire et à quoi il est utile." We think that these insights can offer a useful analogy to understand the struggles between the *umma* and de Caliph. We should also recall that the adaptation of the concept of "society" in Islam often happens through an analogy to the *umma* as a community of faith, but also to a new form of collective organisation functionally articulated (Tripp, *Islam and the Moral Economy*, 18).

What is particularly fascinating in the case of medieval Islam is that these two economies of power are institutionalised simultaneously; in Bourdieu's words: the process of formalisation, of defining boundaries and creating durable difference that will guide human behaviour, occurs in the ninth century for the most part, and is a source of later permanent struggle that contributes to reconfigurations and shifts between the two economies of power. However, we may also add that as boundaries between these two economies of power were not always clear, actual historical processes tended to take paradoxical forms: the Ḥanbalites were not the only nor the last religious group who claimed an opposition to political power which was rooted on the claims of the community, only to be later incorporated into mainstream Caliphal ideology. The permanent social tension between these two economies of power that we have described in this paper was always nurturing itself with concepts and ideas that had a variety of origins, but were also cumulative and, therefore, increasingly complex.

If we try to address now the initial question about how and why institutions foster change, and what do we envision as "proper" change, the example of the resilient moral economy supported by the *ḥisba* gives us an altogether different perspective from that exposed by Douglass North (or followers such as Kuran). Are we talking about the "presence" or "absence" of a particular type of institution (i.e. formal vs. informal)? Are we thinking of particular organisations that express the practice of an institution in society and of their structure (again more or less formalised)? Can we think of institutions, as we often do, in a reified manner, as "things" that can be "lacking" (or "in excess") in a particular society?

We think that these are inadequate questions that guide our search into dead-end tautologies. Institutions are not organisations as they are in permanent change. Institutions are not really the rigid frameworks that channel individual unconstrained desires (or "wants") in order to produce the spirit or continuity of a nation or society (as the creators of the concept of institutions would have it). Maybe we should consider institutions as a virtual political arena where social conflict takes place.[73] In our view, institutions are loci of struggle. That is, they are attempts at formalisation that are permanently challenged by those groups that want to change the existing structure of power. But the modes of challenging and changing are multiple and can be more or less aggressive towards the organisations that express, in their practice, those institutions. The tension between the pace of change of institutions and that of

73 Cf. P. Abrams, "Notes on the Difficulty of Studying the State," *Journal of Historical Sociology* 1 (1988 [1977]), 58–89.

organisations is often what produces breakthroughs and innovative social situations. Often, though, institutions might change under the cloak of organisations that appear immutable.

If we want to understand political and economic difference through comparison (in our case broadly between East and West, or Christian and Islamic polities), we should first try to understand social relations and processes in their own terms as they have developed in a particular historical conjuncture, including the connections with other social groups and polities. Also, we should adopt the ontological axiom that nothing is ever lacking (or for that matter in excess) in any social organisation, it just "is" in a certain way at a certain point in time, and this being, in its permanent transformation, marks the struggle of individuals and collectives over access to resources, power, prestige and knowledge.

PART 2

Themes and Investigations

Law and Codification

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Following these initial explorations of methods of studying processes of institutionalisation and functions of institutions, we now shift to a thematic approach. We begin in a deliberately simple fashion, with individual papers each dealing with one of our geographical/cultural areas of focus: Western Christendom, Byzantium, and Islam. And again deliberately, we begin with one of the issues that has frequently been associated with institutionalisation, the codification of law. Such codification, be it in Justinian's time or the twelfth century, has been seen as manifesting many characteristics of institutionalisation: the employment of literate technologies; specialist knowledge; abstraction; fictions, and so on. In particular in Western Christendom, the "legal revolution" of the long twelfth century is associated with transformations not just of the government of realms, principalities, and towns, but also of other institutions such as the Church. In Byzantium the chronology of legal development is rather different, whilst Islamic law is often regarded as having undergone no similar processes tending to codification. These broad interpretations are explored and interrogated by the essays that follow.

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CHAPTER 4

Codification in Byzantium

From Justinian to Leo VI

Bernard H. Stolte

1 Introduction

Roman law is one of the most successful products of Classical Antiquity. Its history inescapably has to mention the emperor Justinian I, whose reign formed the starting-point of two diverging paths. One leads in a western, Latin direction and carries on, through medieval Italy, to the modern civilian tradition of Western Europe. The other points eastward and is Greek, or rather Byzantine. Legal historiography has traditionally occupied itself with one or the other. Nevertheless, few topics lend themselves so well to a comparative perspective as the fate of Justinian's codification and subsequent legislative activity. Both paths start in Constantinople, in the early years of that emperor's reign (527–565). This paper's emphasis will be on the development of Roman law during the roughly 350 years from Justinian to Leo VI.

2 What Went Before: The Genesis and Intentions of Justinian's Codification

Roman law developed as a non-codified system. To be sure, there had been written normative texts from as early as – so far as we know – the fifth century BC, whose interpretation of course played an important part in subsequent developments, but it is precisely that development that remained uncodified until Late Antiquity. In the Late Republic and the Empire until the middle of the third century, the interpretation of the legal norm was in the hands of a small group of *iuris periti*, who orally advised parties as well as magistrates on points of doubt. The social prestige of these *iuris periti* ensured that their opinions were respected; indeed, although they were the words of private individuals, they enjoyed a status that put them almost on a par with the formal normative texts issued by the legislator, who rarely saw the need to change the norm itself in the light of these legal opinions. They were written down and collected and were tested in discussions with other jurists. In this way the interpretation of the norm could develop in a fairly consistent way. A great number of these opinions has been preserved in Justinian's *Digest* (see below) and is valuable evidence of this process of interpretation.

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In the beginning of our era the legislator, which had originally been the Roman people, increasingly became the emperor, although for a time thinly disguised as the senate. The details may be left on one side. The *iuris periti* became expert and powerful bureaucrats in the service of the emperor. Thus it became the imperial chancery which issued new legislation, and in the fifth century AD the first successful attempt at codifying the existing law produced the *Codex Theodosianus*. Interestingly it comprised only the imperial legislation insofar as deemed useful up to the year of promulgation, 438. The body of private legal opinions mentioned above remained uncodified, and the emperor did no more than issue rules of precedence for cases where two or more jurists had written conflicting opinions which dealt with the same problem: in the so-called *lex citandi*[1] he laid down that in court only the opinions of Papinian, Paul, Ulpian, Modestinus and Gaius could be quoted. When their opinions diverged, the majority would prevail; in case of a tie, Papinian's support would be decisive, and only if Papinian had not spoken on the problem in question was the judge free to decide for himself.

This was the state of the law in 527, when Justinian I came to the throne. Justinian emphatically positioned himself as successor of the emperor Augustus, indeed of Aeneas. He set out to conquer and govern *armis legibusque*, with weapons and laws, and took the process of codification to its final completion: he incorporated the body of private legal opinions into his codification.

Justinian began with an update of the *Codex Theodosianus*, issued in 529 as the first *Codex Iustinianus*. In 530 he ordered that a committee presided over by the jurist Tribonian select and edit a collection of existing legal opinions, which then was promulgated in 533 as the *Digest*. Technically speaking, the latter was one, extremely long constitution, in which the imperial mouth had spoken the words of the ancient Roman jurists as they had been selected, in some cases amended, and rearranged in systematic order by Tribonian's committee. Since the *Digest* was formally an imperial constitution, it, as a *lex recentior*, set aside the first *Code* in points where the two differed. Therefore Justinian ordered a second edition of the *Code* to be made with a twofold aim: to incorporate his own constitutions since 529, but also, and not least, to take into account the promulgation of the *Digest* in 533. The result is the *Codex Iustinianus repetitae praelectionis* of 534, the *Code* as we know it.[2] The explicit words of the emperor tell us that, from now on, nobody was to quote imperial

1 Part of a constitution of 426, preserved as CTh 1,4,3.

2 The *Digest* is symbolically incorporated into this *Code* in the form of the two introductory constitutions *Deo auctore* and *Tanta*, as C. 1,17,1 and 2 respectively.

legislation from sources other than his *Digest* and this second edition of his *Code*.[3] In short, there was to be no law outside the codification, unless subsequently amended by the emperor himself in so-called *Novellae constitutiones*.

17 November 534 definitively brought Roman law of Latin Antiquity to an end. The past had been "deleted" most efficiently. And indeed, no manuscripts of pre-Justinianic Roman law were copied after that date. Insofar as the old legal texts have been handed down to our days, they either had found a safe place to gather dust or have been "preserved" in palimpsested form. The apparent exception of the *Codex Theodosianus*, or rather, its fate in the form of the *Lex Romana Visigothorum*, is to be located outside the territory where Roman rule from Constantinople effectively held sway.

This incisive breach in the gradual development of Roman law was accompanied by another change with far-reaching consequences. Justinian had codified in Latin, but from 534 onwards he legislated in Greek. That he should have elected to do so is less remarkable than his preference for the use of Latin for the codification. Had he acted otherwise, the fate of his codification in the West would obviously have been different. The so-called rediscovery of the Justinianic *Corpus iuris* in Northern Italy in the second half of the eleventh century hardly could have taken place if it had not been in Latin.

So the stage had been set already in the sixth century: a Latin codification had been issued for a mainly Greek-speaking empire, which could not absorb it without translations. At the same time, the western part of the (former) Roman Empire was unable, both culturally and politically, to adopt that codification. In all this, Justinian had reserved for himself a monopoly on legislation and its interpretation. Of course, this monopoly was a reality only in Byzantium. The smaller the Empire became, the easier it must have been to maintain. In that respect the situation has always been entirely different in the West, at which part of the world we must now take a brief look before we return to Byzantium.

3 The Western Middle Ages and the Justinianic *Corpus iuris civilis*

In the established view Justinian's legislation – i.e., his codification plus subsequent *Novels* – never really penetrated westward until the eleventh century. It is perhaps ironic that an exception must be made for precisely the *Novels*, or rather, for their summarising translation into Latin, the *Epitome*

3 Const. Tanta/Δέδωκεν § 19; const. Cordi § 5.

Iuliani, which is already attested in the West in the early Middle Ages.[4] The *Digest*, however, which was to prove the most influential text in forming the civilian legal tradition, was never "used" before the high medieval period. Although I think we must allow for a more variable history in the Italian peninsula, this picture is by and large correct. From the eleventh century onward, however, the story changes dramatically and is too well known to need telling here.[5]

As for the *Glossa Ordinaria* of the medieval *Corpus iuris civilis*, let it suffice to remind ourselves that the work of the Glossators is witness to a process of appropriation of the Justinianic legislation as a "strange" text, a text written for a different age and society. Never was it considered a codification in the strict sense of the word. Nor was the notion that there was no law outside the Justinianic texts ever accepted in the Middle Ages. What was accepted was the idea that this body of texts formed a seamless web, in which no contradictions were to be found. To that end a panoply of interpretative techniques was brought to bear on individual passages, with an utter disregard for their historical context.[6]

This all-too compressed account is not new, of course. But it is worth mentioning that, in principle, what happened in Bologna in the eleventh century and spread over Western Europe, shows marked similarities to what had happened in the sixth century in Byzantium, similarities to which I will have occasion to refer in what follows. But first we must look at the fate of Justinian's codification in Byzantium, on which this paper will focus, especially in the centuries from Justinian to Leo VI.

4 Justinian's Codification in Byzantium: The Sixth Century

In the same established view, contrary to its history in the Western Middle Ages, in the Byzantine Empire Justinian's legislation was in continuous use, albeit in Greek translations and summaries. This is correct, as far as I can see, but it is important to understand how this was brought about.

4 W. Kaiser, *Die Epitome Iuliani. Beiträge zum römischen Recht im frühen Mittelalter und zum byzantinischen Rechtsunterricht* (Frankfurt am Main,: Klostermann, 2004). See also below, 64–65.

5 See also the paper in this volume by Emanuele Conte and Magnus Ryan, below.

6 It is impossible to list the ocean of literature, which is easily found through the handbooks of medieval (Roman) law such as H. Coing, *Handbuch der Quellen und Literatur der neueren europäischen Rechtsgeschichte* I*: Mittelalter* (Munich: Beck, 1973), and H. Lange, *Römisches Recht im Mittelalter* I*: Die Glossatoren* and II*: Die Kommentatoren* (Munich: Beck, 1997–2007). Of the older literature, *pace aliorum*, P. Koschaker, *Europa und das römische Recht* (Munich: Biederstein Verlag, 1947 [Beck, 1966]) has become a classic.

It is impossible to understand the historical context of Justinian's legislation without taking into account the work of the jurists of the sixth century. It is equally impossible to make sense of Byzantine legal history without doing so. In legal historiography, however, Justinian's Latin compilations and the commentaries in Greek are hardly ever taken into consideration, let alone studied, in the same context. Indeed, in western historiography most attention has been paid not to the sixth century in which the Justinianic *Corpus* was born, but either to the pre-Justinianic, so-called "classical" period of Roman law in which had been written the great majority of texts from which the *Corpus* was composed, or to its subsequent history from the moment of its revival in the high Middle Ages. In both cases the Justinianic *Corpus* provides the texts, with its concomitant hermeneutical difficulties. Byzantine historiography, on the other hand, tends to emphasise the non-Justinianic, originally Byzantine elements in its development. This, of course, is bound up with the question of when "Byzantium" really begins.[7] That said, studying the Justinianic legislation in the context of the sixth century requires reading Greek commentaries on a Latin text and being aware of the way they have been transmitted. Linguistic problems and lack of translations undoubtedly have contributed to the chasm between western medievalists and Byzantinists to which I referred in my introduction.

For our study of the divergent paths, at least, we may take the Justinianic texts for granted. To be sure, there are textual problems, but the standard editions[8] set out to offer the texts as they had been promulgated by Justinian, and these are the texts the Byzantine jurists took as their starting-point.

5 The Roman Codification, Its Transformation into Byzantine Law and the Novels

Justinian's codification was new and in Latin and could not be "applied" in Byzantium without a "translation," both linguistically and intellectually.

7 The practical way out is to make it begin with the foundation of Constantinople and therefore the reign of Constantine the Great. See the sensible approach by Liz James in the "Very, Very Short Introduction" to *A Companion to Byzantium*, ed. Liz James (Chichester: Wiley-Blackwell, 2010), esp. 2; see also further literature as indicated there, and F.K. Haarer's chapter on "Writing Histories of Byzantium: the Historiography of Byzantine History," ibid. 9–21. For Byzantine law I prefer a different approach: see below, in the next section.

8 The three volumes of the hand-edition of the *Corpus iuris civilis*, or, better even where *Digest* and *Code* are concerned, in their *editiones maiores*: *Digesta Iustiniani Augusti* recognovit adsumpto in operis societatem Paulo Kruegero Th. Mommsen, 2 vols (Berlin: Weidmann, 1868–1870), with extensive *praefatio*, and *Codex Iustinianus* recensuit Paulus Krueger (Berlin: Weidmann, 1877), confusingly with the same title and year as the *editio stereotypa*.

Until that process of transformation had been completed, the law would remain Roman. This process is relatively well-known. Not only do we have a large body of texts which testify to the result – a "Byzantine" interpretation of Roman law in Greek – but these also enable us to follow their genesis. The key word is teaching: the great majority of these texts stem from the classroom. We know some names and are able to determine characteristics of individual "law professors." Collectively they are known as *Antecessores*.[9] The histories of the sources of Byzantine law describe these texts and their transmission.[10]

Without going into too much detail, we have Greek translations, summaries and commentaries, together testifying to a process of "appropriation." These texts, then, are the roots of Byzantine law: it is here that Byzantine law begins its independent development. Its story is in great part the story of how the Byzantines defined their position vis-à-vis the Justinianic codification, and to what extent they really "used" it. It is clear that from the beginning, immediately after the promulgation, these Greek texts served as intermediaries between the Justinianic texts and their users. In theory, the original texts remained binding. In practice, however, this role was soon taken over by the intermediaries.

At the same time it is important to realise that for Justinian the codification was not an end but an intermediate stage on the road to perfection; hence the *Novellae post Codicem constitutiones*, or rather, the Νεαραὶ μετὰ τὸν Κώδικα διατάξεις, which mark the definitive step from Latin to Greek.[11] The codification had brought the past to a conclusion; now the future lay open to legislation that was to take account of the "ever-varying nature," asking for fitting measures by a vigilant and tireless emperor.

During the first decades of the existence of the codification, therefore, it was approached along two lines. On the one hand there was an attempt at "appropriation" through translation and interpretation, on the other a sometimes radical deviation from the rules that had been set out in 533/534: the law of succession is an obvious example.

The latter process is much less clear than the former, though its results are, of course, the *Novels*. Their preambles usually inform us about occasion and considerations, but here we are rarely able to advance beyond the words of the

9 H.J. Scheltema, *L'enseignement de droit des antécesseurs* (Leiden: Brill, 1970).

10 N. van der Wal. J.H.A. Lokin, *Historiae iuris graeco-romani delineatio. Les sources du droit byzantin de 300 à 1453* (Groningen: E. Forsten, 1985); Sp.N. Troianos, *Οι πηγές του βυζαντινού δικαίου* 3rd ed. (Athens, Komitini: Ant. Sakkoulas, 2011).

11 G. Lanata, *Legislazione e natura nelle Novelle giustinianee* (Naples: Edizioni Scientifiche Italiane, 1984).

emperor himself. This new legislation, too, was taught. Since it was in Greek, here Latin-speakers were at a disadvantage, and *Authenticum* and *Epitome Juliani* are witnesses of attempts at solving the linguistic difficulties that they experienced.[12] The very fact that the texts had been issued in Greek must also have made them more readily accessible to practising lawyers, who soon summarised them. From a legal point of view, the most successful of these summaries is the *Syntagma* of Athanasius of Emesa,[13] and as such it made its mark in the Byzantine world. The *Authenticum* and *Epitome*, though originating in Byzantium, soon had no use in the East and instead became important signposts for the western path.

6 Antecessors and Glossators

To a certain extent the Byzantine process of "appropriation" is similar to what the Glossators were to do with the *Corpus iuris* in the eleventh to thirteenth centuries. Of course, there are differences. On the one hand the Glossators would not have the problem of a foreign language, but on the other, they had to cope with a time gap of more than five centuries, from which the *Corpus iuris* had emerged as a "closed Revelation," not amended by subsequent legislation, as had been the case in Byzantium.

In my view, however, the similarities are much greater. Especially, we should not make the mistake of confusing problems of transmission of the texts with those of their content. It is true that most of the Byzantine antecessorial writings have been transmitted only indirectly, whereas we have a great number of manuscripts of the Glossators. One striking similarity is that neither the Antecessors nor the Glossators were principally oriented towards legal practice. On the contrary, both wished to get a grip on the legislation as a whole: not until then would it be possible to apply it to practical problems. The manuscripts of the Glossators have already been mentioned. Less known is the fact that there is solid evidence of the sixth-century writing of glosses, in Greek, in the margins of the Latin texts. Examples are the scanty remains of *Digest* manuscripts such as P. Reinach 2173,[14] and the more extensive palimpsested leaves

12 Scheltema, *Antécesseurs*, 47–60; Van der Wal & Lokin, *Delineatio*, 44–46; Troianos, *Peges*, 137–139.

13 D. Simon, Sp. Troianos, *Das Novellensyntagma des Athanasios von Emesa* (Frankfurt-am-Main: Löwenklau-Gesellschaft, 1989).

14 R. Seider, *Paläographie der lateinischen Papyri*, II, 2 (Stuttgart: Anton Hiersemann, 1981), nos 18, 68, plate VI.

of a manuscript of the *Code*, now in Verona.[15] Direct descendants are the *Paraphrasis Institutionum* of Theophilus[16] and the so-called "ancient" *scholia* in the manuscripts of the *Basilica*.[17] Whether the quality of these commentaries is on the same level is another matter. Although hardly any systematic comparison has been undertaken, it is probably fair to say that the Byzantine Antecessors of the sixth century were less creative than the Glossators were to be 500 years later, but it is perhaps also the distance in time that has contributed to their ability to find space for such creativeness.[18]

7 The Basilica: Justinian I or Leo VI?

The period under consideration in this paper is concluded by a kind of *renovatio Justiniana*, the *Basilica*, short for *ta basilika nomima*, the imperial laws. Since our knowledge of what happened in the sixth century to a great extent depends on the texts included in this compilation, we must run ahead chronologically and deal with it at this point.

Circa 900, in the reign of Leo VI, the Justinianic legislation was reorganised: a system of books and titles was devised in such a way that the content of the above-mentioned[19] sixth-century Greek versions of *Digest*, *Code* and *Novels*, insofar as dealing with the same subject-matter, were brought together under the same titles. The promulgation of the *Basilica* thus marked the completion of a process in which the Latin texts were finally replaced by one, official Greek version in which the relevant passages of *Digest*, *Code* and *Novels* were redistributed over the various titles of sixty books.

At first sight, this compilation seems to be a recodification of Justinianic law in Greek form, but this is not the case, or only to a limited extent. Other

15 Cod. Veronensis 60 (LXII): see E.A. Lowe, CLA IV 513. The apographum by P. Krueger, *Codicis Iustiniani Fragmenta Veronensia* (Berlin: Weidmann, 1874), omits the *scholia* entirely. For these see K.E. Zachariä von Lingenthal, "Die griechischen Scholien der rescribierten Handschrift des Codex in der Bibliothek des Domcapitels zu Verona," *Zeischrift für die geschichtliche Rechtswissenschaft* 15 (1850), 90–132; H.J. Scheltema, "Subseciva I: Die Veronensischen Kodexscholien," *Tijdschrift voor Rechtsgeschiedenis* 30 (1962), 252–253.

16 J.H.A. Lokin et al., *Theophili Antecessoris Paraphrasis Institutionum. With a translation by A.F. Murison* (Groningen: Chimaira, 2010).

17 See below, Section 7.

18 Cf. also B.H. Stolte, "Is Byzantine Law Roman Law?" *Acta Byzantina Fennica* NS 2 (2003–2004), 111–126, esp. 121–126, and see below, Section 9 at no. 4.

19 Above, Section 5.

translations and summaries as well as various commentaries, originating in the sixth century, were cut up and appended as *scholia* to the *Basilica* text, to serve as aids for understanding and interpreting that text: the so-called "ancient" *scholia*. (In a revival of Byzantine legal scholarship in the eleventh and twelfth centuries, "new" *scholia* appeared, i.e. not texts going back to the sixth century that were in fact commentaries on the *Digest*, *Code* and *Novels*, but commentaries bearing directly on the *Basilica* and written for that purpose.)

The most striking fact, perhaps, is that the *Basilica* do not as a rule take into account post-Justinianic legislation, nor even geographical or social developments. Thus they are a reaffirmation of and reorientation on, rather than a revision or recodification of, Justinianic law. To be sure, they do not incorporate every single Justinianic passage, and they do include more than one which cannot have been relevant to the circumstances of the day, leaving the reader somewhat perplexed as to their precise intentions. But by and large one gets the impression that the *Basilica* are meant as a (gigantic) help for the reader who, in theory, should continue to know himself to be bound by Justinianic Roman law. This impression is reinforced by the compilation, in the same period, of legal Latin-Greek lexica of especially technical terms such as *emptio* or *ususfructus*.[20] Although I am convinced that we are often too pessimistic about the knowledge of Latin in Byzantium or of Greek in Latin-speaking Western Europe, I am not for one moment arguing that in Byzantium Latin continued to be the language of the law in any real sense. The use of Latin was restricted to the technical terminology of the law, in the form of Latin roots but provided with endings that fitted declension or conjugation in Greek. The fact that these lexica apparently were felt to be useful proves that in the ninth century this terminology still was essentially Latin.

8 Legal Practice from Justinian to Leo VI

The four centuries from Justinian to Leo VI thus seem to have been a period of little change: Justinian's codification, as amended in a number of that emperor's *Novels*, continued to be in force. It was only the way in which it was being consulted that changed. Two related questions remain: what happened in legal practice, and what was the status of the smaller compilations that had

20 *Fontes Minores VIII: Lexica Iuridica Byzantin* ed. L. Burgmann et al. (Frankfurt-am-Main: Löwenklau-Gesellschaft, 1990).

appeared during that period, such as the *Nomos georgikos*, the *Ecloga*, the *Prochiron* and the *Eisagoge*?[21]

Unfortunately we possess hardly any documentation of actual cases. To be sure, there are isolated reports and indirect testimony from which the application or non-application of certain rules in individual cases may be inferred, but we do not have the kind of serial sources which are available for the later period. Given the loss of archives at government level, the best we can do is to exploit the legal papyri,[22] in Greek as well as in Coptic, raising, of course, the question of their representativeness for the early Byzantine Empire. Information about the Justinianic age is dominated by the codification, but we should not forget that many *Novels* are in fact the imperial responses to actual cases. Historians often tend to be unduly dismissive of the representativeness of the formal sources for "law in action." It is true that we are not as well served with evidence as we would like to be, but the work of, e.g., Joëlle Beaucamp shows what may be achieved.[23]

The question of the status of the "law books" or "manuals," as these compilations are often called, requires a longer answer.[24] It is worth considering the nature of the manuals, their contents, and their relation to the codification. The established opinion seems to be that – perhaps with the exception of the *Eisagoge*, which is at the same time a philosophical and propagandistic pamphlet – these shorter compilations reflect the needs of legal practice and are closer to "law in action" than the Justinianic legislation.

As to their contents, these law books fall into two categories. On the one hand there are the *Nomos georgikos*, the *Nomos stratiotikos* and the *Nomos nautikos*. As their names indicate, they contain a set of rules for a restricted field. As such they have also been called the *Leges speciales*, and the lawyer will immediately think of exceptions to *leges generales*, the latter being the Justinianic legislation. On the other hand we also have law books with a general scope: the *Ecloga* of the Isaurian emperors, promulgated in 741, and about 150 years later the *Procheiron* and *Eisagoge* (in this order or vice versa according to the opinion one wishes to endorse).[25] That they are intended to be general manuals –

21 Troianos, *Peges*, where the most recent literature is referred.

22 J. Beaucamp, "L'histoire du droit byzantin face à la papyrologie juridique. Bilan et perspectives," *Fontes Minores* 11 (2005), 5–55.

23 J. Beaucamp, *Le statut de la femme à Byzance (4e–7e siècle)*, 2 vols (Paris: De Boccard, 1990–1992), and her survey article quoted in the preceding footnote, with its rich bibliography.

24 See also B.H. Stolte, "Balancing Byzantine Law," *Fontes Minores* 11 (2005), 57–75, esp. 67–72.

25 The evidence is inconclusive. A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern* (Frankfurt-am-Main: Löwenklau-Gesellschaft, 1986) proposes to change the accepted view and dates the *Procheiron* after the *Eisagoge*. Th.E. van Bochove, *To Date and Not To*

the name "*procheiron*" could in itself hardly be clearer – transpires from their *prooimia*. None of them speaks about replacing the existing Justinianic law; if they were meant to replace something, it was other manuals.

There are two reasons to mention the *Ecloga* separately. One is a historiographical myth: the *Ecloga* has for a long time been surrounded with a Christian reformist aura, which has been dispelled in recent years. Both its character and its provisions are to a large extent Justinianic.[26] The other reason is its wide distribution: there has been a Slavonic, Armenian and Arabic-Coptic reception. Thus it is arguably one of the most successful Byzantine law books.

The *Procheiron* and *Eisagoge* share predominantly the same subject-matter and are both greatly indebted to the Justinianic legislation, although special problems are connected with each of them individually.[27] They set out a political theory of the Byzantine state, in which emperor and patriarch possess equal authority. This hardly reflects political reality: rather in this respect it is a political pamphlet, containing the views of the unique and outstanding figure of the patriarch Photius. This impression is reinforced by a few rules that could have been written for him *ad personam*.[28]

If, then, these law books turn out to be for the greater part a selection of "Justinianic" rules, it seems fair to say that in Byzantium the *Corpus iuris* was being "applied" in the centuries between Justinian and Leo VI, albeit we should abandon an anachronistic vision of a judge with the *Corpus* or the *Basilica* on his desk. Perhaps it would be more realistic to imagine an average lawyer studying one of the manuals. All the same, when we read in the *Book of the Prefect* (912) that a notary "should know the forty titles of the manual of the law by heart and possess knowledge of the sixty books" (1,1,2), the ideal is clear enough.

Not a manual, but at least a manageable book, the Justinianic *Institutes* have been transmitted in the form of the *Paraphrasis* of Theophilus. It is true that we have little evidence of their use between the seventh and the eleventh centuries, but the fact that they have survived in a transmission separately from the other parts of the Justinianic legislation might also be explained as an indication of some continued use as teaching material.

Date. On the Date and Status of Byzantine Law Books (Groningen: E. Forsten, 1996), makes an excellent case for the traditional view. See also Troianos, *Peges*, 246–248, with literature.

26 The reader is referred to the excellent *Einleitung* of its editor Ludwig Burgmann; L. Burgmann, *Ecloga. Das Gesetzbuch Leons iii und Konstantinos' v* (Frankfurt-am-Main: Löwenklau-Gesellschaft, 1983).

27 See also the survey by Troianos, *Peges*, 241 ff., with references.

28 See, e.g., Eis. 8,4 and cf. Troianos, *Peges*, 243–246, with bibliography.

A further aspect, often mentioned in treatments of western medieval legal history, should not be forgotten here, either. If the Church has been a major factor in the reception of Roman law in the West, this is no less true of Byzantium, where this happened at an earlier date. The so-called *nomocanones* are clear evidence. Collections of *nomoi* and *canones*, of secular and ecclesiastical legislation pertaining to religious and ecclesiastical affairs, were compiled in Byzantium from the sixth century onwards. The *nomoi* are selected passages from the Justinianic *Code*, *Digest* and *Novels*, the *canones* rules established by the competent legislator in the Church. These collections are an indication of the wish to have access to the relevant provisions from the large bodies of secular and ecclesiastical legislation. The *Collectio Tripartit*a and the *Nomocanones*, in which this access was facilitated through a systematic repertory in three parts or in Fifty or Fourteen Titles, must have played a role similar to that of the manuals mentioned above. Their transmission in numerous manuscripts points to a wide distribution and, insofar as the secular Justinianic *nomoi* are concerned, we may consider their occurrence, again, as *prima facie* evidence of their use in legal practice.

9 Some Reflections

Without the secular and ecclesiastical manuals considered in the previous section, and in the absence of solid evidence of use in legal practice, it would be very hard to make a case for a continuous practical application of the Justinianic codification in Byzantium. It would then have been tempting to see the presence of Justinianic Roman law in Byzantium as a phenomenon of merely ephemeral interest, the vast legislation a dinosaur to be replaced by an equally unwieldy animal (the *Basilica*), only marginally better adapted (in Greek) to the society for which it was meant. In some form the animal has always been used. For a balanced view of its role in Byzantium, however, the following points need to be considered:

1. This dinosaur never became extinct. In fact, on various occasions it managed to adapt itself very cleverly to a changing environment. The compilation of the *Basilica* circa 900 is such a moment, when a cultural revival known as the Macedonian Renaissance had created the right circumstances.[29] More than four centuries later an abridgement into the

29 P.E. Pieler, "Ανακάθαρσις τῶν παλαιῶν νόμων und makedonische Renaissance," *Subseciva Groningana* 3 (1989), 61–77.

Hexabiblos – the name indicates a reduction of the size to one tenth, from sixty to six books – was another. In both cases it was ultimately the Justinianic legislation that provided the contents. (And when, in the nineteenth century, Greece won independence, her first reaction was to propose a reintroduction of the *Basilica*.[30] It has probably been her great fortune that nothing came of it.) Surely this fact alone is clear evidence of vitality?

2. Just as in the size of the compilations, there were great variations in the level of competence with which the material was digested, commented upon and used. As said above, we have the evidence of such use in written documents for later times, and there is no reason to doubt it for the years between Justinian I and Leo VI, although it may have happened in smaller measure and at a different level. If we make assumptions about a lack of intellectual and juristic sophistication for the seventh and eight centuries, these are probably correct. At the same time we are still talking about the application of Roman law.

   The transformation of the Latin Justinianic corpus into a Greek body of texts in the sixth century required a high intellectual level. The extensive remains of that process, available to us in the *Paraphrasis Institutionum* of Theophilus and in the so-called ancient *scholia* on the *Basilica*, prove the presence of an intellectual elite capable of carrying out that work. A similar intellectual level was necessary in the ninth and tenth centuries for the compilation of the *Basilica* and the subsequent addition of these ancient *scholia*, and again for the writing of so-called new *scholia* in the eleventh century. In no phase was the Justinianic legacy rejected as such. Rather it always remained present, in the forefront or in the background. Complaints about a lack of understanding of Justinian's words miss the point: it is their continuous use that is so remarkable.

3. In Byzantium, contrary to Western Europe in the Middle Ages, the Justinianic heritage of *Institutes*, *Digest*, *Code* and *Novels* was susceptible of change. What one Roman emperor had legislated could be changed by his successor. Justinian himself had set the example, and Leo VI wished to be another – and better – Justinian. And in fact, Roman emperors after Justinian did issue Novels, especially so Leo VI.[31] However, no subsequent

30 Sp.N. Troianos, "Von der Hexabiblos zu den Basiliken," *Subseciva Groningana* 3 (1989), 127–141.

31 Post-Justinianic Novels are easiest found in *Jus Graecoromanum* I (Athens 1931); those of Leo VI in *Les Novelles de Léon VI le Sage*, ed. and trans. A. Dain and P. Noailles (Paris: Soc.

codification systematically took into account these amendments. Or perhaps we should say, no codification in the modern sense of the word was undertaken after Justinian. No new text was produced by the legislator which cancelled the past and provided a fresh beginning. The legal wisdom of the sixth century continued to be available and in fact to be drawn upon. When we read in the eleventh-century *Meditatio de nudis pactis* that one should not restrict oneself to the *Basilica*, but also study the more extensive texts of the sixth century,[32] this is no mere rhetoric: in the *Peira*, a unique collection of court cases from the same period, there is evidence that this is what occasionally happened.[33] A palimpsested text recently discovered in Vienna is testimony to the fact that these older treatises even continued to be copied.[34]

In all this we see an ambivalent attitude towards the Justinianic heritage: it was susceptible of change, but was never cancelled entirely, always remaining available to be called upon. In this respect there is not much difference with the *Corpus iuris civilis* in the western *ius commune*.

4. Finally, the diverging paths. Obviously, East and West have gone their separate ways in various respects. It would be foolish to maintain that their paths have remained close when it comes to the role of the Justinianic legislation. Nevertheless, I believe that similarities have been neglected and the differences somewhat exaggerated.

The similarity of the work of the Antecessors and that of the Glossators has been pointed out above. Without the work of the Glossators, the new legal system of the *ius commune* would never have come about in the West. Once "transformed" into a collection accessible to Greek-speaking lawyers, in Byzantium, too, the Justinianic legislation has been

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d'édition "Les Belles Lettres," 1944), and with translation into modern Greek now in Sp. Troianos, *Oi Neares Leontos S'* [*VI*] *tou Sophou* (Athens: Erodotos, 2007). For separate editions with translation of (groups of) individual Novels, see the specialised bibliographies.

32 H. Monnier & G. Platon, *La Meditatio de nudis pactis* (Paris: L. Tenin, 1915), repr. in H. Monnier, *Études de droit byzantin*, no. III with original pagination (London: Variorum, 1975), § 26.

33 E.g. the reference to the *nomos* in Peira 49,19 [*Jus Graecoromanum* IV p. 202 with n. 3] clearly is to D. 23,2,57,1. This example may be supported by other references to Institutes, *Digest* and *Code*, some of which have been extended by references to their place in the Basilica. Yet another may be hidden in the mentioning of "a scholion in the margin … from *De iudiciis*" in Peira 67,1 [*JGR* IV p. 251].

34 B.H. Stolte, "'Αγωγή antistricta? Bemerkungen anläßlich eines Fragments eines palimpsestierten Digestenkommentars", *Antecessor: Festschrift für Spyros N. Troianos*, ed. V.A. Leontaritou et al. (Athens: A.N. Sakkoulas, 2013), 1661–1665.

a storehouse from which system, method, terminology, rules and teaching-material could be and were taken. The real difference lies in the results, or, to adapt the metaphor of the paths: East and West walked the same paths, yet arrived at different destinations.

With all its peculiarities and sometimes vast local differences, the western *ius commune* managed to rise to a high level of abstraction, to a system capable of absorbing other normative rules and of generating answers to new questions and sometimes new answers to old questions. Byzantium, on the other hand, has failed to develop such a sophisticated system. I have written elsewhere that "the true pupils of the ancient Roman jurists were not the Byzantines, but the late medieval lawyers of Bologna and elsewhere in the Latin, western world."[35] The Roman creative legal genius travelled along the Bolognese path. Ironically, due to the facts that in Byzantium there had been no interruption of five centuries but continuity in the use of the Justinianic legislation, and that the Empire knew no independent cities but was a central state, the challenges to develop something similar to the western *ius commune* may have been lacking.

5. In this paper, when speaking of the Byzantine attitude vis-à-vis Roman law, I have used the word "heritage" and not of "legacy."[36] This is not just by way of speaking: from a legal point of view there is a difference. The corresponding Latin words are *hereditas* and *legatum*. In Roman law there is a clear distinction between the two. The *heres* or heir succeeded universally, i.e. to both rights and duties, to assets and obligations such as debts. He could reject the *hereditas*, but to accept meant that he literally stepped into the shoes of the deceased: it was impossible to pick and choose the good bits and conveniently forget the rest. A legatee was in a different position: he or she was given an asset only, a right or rights under the will made by the deceased. If there was no will, there would be no legacies, but there would still be a *hereditas*, governed by the rules of intestacy.

It would seem to me that the main difference between the western and the Byzantine world is that between a legatee and an heir. The Byzantines definitely were the self-confessed (intestate) heirs of the Romans, as indeed the word *Rhomaioi* confirms. They never thought of rejecting; one could even see them as *heredes necessarii*, the class of *heredes* who

35 Stolte, "Is Byzantine Law Roman Law?" 124, and see above, 66.

36 This paragraph has also been presented in a conference on "Imperial legacies in a cross-cultural Mediterranean context," Istanbul, 23–25 September 2011. I am grateful to its participants for their comments.

originally did not even have that option. The medieval western world, on the other hand, was a legatee; when we come to think of it, they accepted their legacy under peculiar circumstances. For a long time they do not seem to have been aware that anything was waiting for them. There had been no formal will and no sollicitor to advise them as to their expectations. In the eleventh century they awoke to the potential of this neglected "legacy" and started to exploit the parts they could use. There were no debts to be paid.

All metaphors ultimately fall short of the reality they try to describe. Under the system of the *ius commune* in Western Europe local law had priority and Roman law had subsidiary force. At times the binding force of Roman law as such was questioned, in which case sometimes recourse was even had to a formal introduction of the Justinianic legislation in Italy by the *Sanctio pragmatica pro petitione Vigilii*[37] or a claim laid to a succession to the ancient *Imperium Romanum* by the Holy Roman Empire.[38] In Byzantium such a debate was unthinkable.

We should not insist too much on legal niceties. Perhaps, in the final analysis, we should see the Byzantines as the rightful heirs, with *nuda proprietas* of Roman law, but the western medieval world as the legatees of an *usufructus*, and a very profitable one at that.

37 Text in the appendix to the edition of the *Collectio clxiii Novellarum*, ed. R. Schöll and W. Kroll, *Corpus iuris civilis* III, App. VII,11 (p. 800).

38 Neither of these arguments was the true reason of the adoption of the *Corpus iuris*, of course; the scholarly debate on this point will probably never cease. See, e.g., Koschaker, *Europa und das römische Recht*, 79–82; for a recent review of the possible explanations of the sucess of Roman law, see R.C. van Caenegem, *European Law in the Past and the Future. Unity and Diversity over Two Millennia* (Cambridge: Cambridge University Press, 2002), 73–88.

CHAPTER 5

Codification in the Western Middle Ages

Emanuele Conte and Magnus Ryan

Modern legal history was born in Germany, at the beginning of the nineteenth century, with the particular purpose of providing an alternative to a legal system based on rational codification. As a recent addition to Napoleon's Empire, large areas of Germany experienced the new *Code Civil*, the very model of every modern codification in Europe. The French *Code* was not only the expression of Napoleon's imperial power, but was also a powerful stimulus for the development of a modern capitalist economy based on the principles of private property and freedom of contract. In addition, the rational system of rules it propounded was uniformly valid throughout those areas subject to French control, a fact cited by Anton Friedrich Justus Thibaut in 1814 and by many like-minded lawyers as a compelling reason for the introduction of a similar general codification in Germany.[1] Against this idea, Friedrich Carl von Savigny famously insisted on the supremacy of legal science over the power of the *Herrscherstaat*, affirming as he did so what he saw as the deeply rooted national character of the law. Legislation could at most reflect such a profound, national, legal spirit, while the best interpreters of legislation were trained lawyers to whom the noble task fell – thanks to their knowledge of the history of national law – of conferring a real unity on the private law of their country.[2] The wave of codification which swept through Europe (Prussia in 1794; the two empires of Napoleon and Habsburg Austria in 1804 and 1811 respectively) could not, in Savigny's judgement, deliver the Enlightenment utopia of a rational, simplified and transparent legal system, in which all law would be concentrated in legislation, and the function of the judge reduced to that of robotic application of sovereign rules, with doctrinal interpretation eliminated entirely. Although very influential well beyond the borders of Germany, Savigny's plea for the supremacy of legal science or *Rechtswissenschaft* over legislation possessed intellectual and

1 A short survey of the historiography on codification in Germany by B. Dölemeyer, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, 3.2, *Deutschland*, ed. H. Coing (Munich: Beck, 1982), 1425–1439, with extensive bibliography up to 1980. Still very important and clear: F. Wieacker, *Privatrechtsgeschichte der Neuzeit*, 2nd ed. (Göttingen: Vandenhoeck & Ruprecht, 1967 with many reprints), 348–377.

2 On the role played by law professors in shaping the national private law, see now F.L. Schäfer, *Juristische Germanistik. Eine Geschichte der Wissenschaft vom einheimischen Privatrecht*; Juristische Abhandlungen 51 (Frankfurt-am-Main: Klostermann, 2008), 348–349.

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abstract appeal rather than any practical influence. Even as his ideas were gaining converts throughout the continent of Europe, the French model of legislation was being embraced and imitated by nation states, as they promulgated numerous civil codes to regulate their new industrial economies.[3]

These competing evaluations of the relationship between legislation and codification in European legal systems in the very age in which modern legal history as a discipline was being born still colour our understanding of the history of codification in late antiquity and the Middle Ages. On the one hand, each collection of legislative texts tends to be seen as a codification in the nineteenth-century sense of the term; on the other, and partly as a result, the influence of Savigny's idea has led to a drastic under-appreciation of the historical significance of officially promulgated collections of law.

Let us briefly consider these two historiographical tendencies. Launched by Savigny and emphasised by the whole German historical school, from Puchta to Beseler and Gierke, the romantic idea that a law is nothing more than an expression of the *Volksgeist* has been a key concept for legal history until surprisingly recent times. On the specific subject of the history of legislation, the landmark study was for nearly a century Fritz Kern's immensely successful *Recht und Verfassung im Mittelalter* – first published as an article in *Historische Zeitschrift* in 1919, then as a small book in Germany, and translated into English in 1939 and many times reprinted.[4] The titles given to the first paragraphs of the book make the principle points of Kern's thesis admirably clear: "Law is old; Law is good; The good old law is unenacted and unwritten; Old law breaks new law; legal innovation is restoration of the good old law." This conception of legislation flows directly from the romantic nineteenth century to the nationalist twentieth, and is a palpable presence in some recent reconstructions of the period.[5] The medieval king is here described as mere "notary" of the rules that are produced by the people and consolidated over time; no intervention by the royal power can change the old good laws, since the king, and even the Emperor, is much more judge than legislator. But, despite the influence of the historical school's romantic point of view – and in some measure because of it – legal historians have often regarded promulgated collections of medieval

3 H. Coing, in Coing, *Handbuch*, 3.1, 3–16 and D. Grimm, ibid., 17–122.

4 F. Kern, *Kingship and Law in the Middle Ages: I. The Divine Right of Kings and the Right of Resistance in the Early Middle Ages. II. Law and Constitution in the Middle Ages*, trans with an introduction by S.B. Chrimes (Oxford: Blackwell, 1939).

5 A. de Robilant, "Genealogies of Soft Law," *American Journal of Comparative Law* 54 (2006), 499–554, particularly 511–518, referring to P. Grossi, *L'ordine giuridico medievale* (Rome-Bari: Laterza, 1995). De Robilant (515, n. 52) underlines the image of medieval law given by Grossi, one that clearly evokes Fritz Kern's ideas.

law as mere instances of the same timeless phenomenon of codification, as if every law book had been a kind of ancestor of the liberal codes discussed above. Both convictions would lead one to expect a certain fixity in the textual traditions of the surviving lawcodes from early medieval Europe.

Prima facie, the available scholarly editions of early medieval law might be thought to reflect precisely such questionable convictions about what constituted a proper legal text, especially those produced by the MGH, in the imposing folio volumes bearing the general title *Leges*, the sceptical reader of which might be forgiven for seeing in them the products of some suspiciously nineteenth-century "legislative department" or *Abteilung Gesetzgebung* of the relevant barbarian kingdoms, a close conceptual relative if temporally distant ancestor of the commission entrusted with compiling the *Allgemeines Landrecht* of 1794. But here a distinction should be made. The textual traditions of the main laws (*leges*) of the barbarian West are, in fact and not merely in editorial imagination, strikingly stable. To take the most obvious example: although *Lex Salica* exists in several versions, it would be nonsensical to deny the existence of a stable core or stem. It is also relevant that a *scriptorium* at Tours made something of a specialism of duplicating legal texts for several decades in Louis the Pious' reign, even if the most recent research has tended to attenuate the links, once thought to be direct, between the work of this *scriptorium* and the royal court.[6] It would be equally erroneous to assume that such texts were sacrosanct above all emendation, for not only *Lex Salica* but other national *leges* too were subsequently modified, in ways which are recoverable and frequently expressive of royal policy. The problem in reconstructing the mental world from which such *leges* sprang arises from the aforementioned misconception that early medieval law was static. Charlemagne's biographer Einhard did not criticise his hero for tampering with the laws, but for failing to correct and emend them with sufficient vigour.[7] The reign of his son and heir Louis the Pious betrays a preoccupation with unity of practice and the consequent perception of the need to correct the law, a conviction which

6 B. Bischoff, *Paläographie des römischen Altertums und des abendländischen Mittelalters*, Grundlagen der Germanistik 24, 2nd ed. (Berlin: Schmidt, 1986), 268; R. McKitterick, "Zur Herstellung von Kapitularien: Die Arbeit des Leges-Skriptoriums," *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 101 (1993), 3–16; H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*, MGH Hilfsmittel 15 (Munich, 1995), 422–423.

7 M. Innes, "Charlemagne, Justice and Written Law," in *Law, Custom and Justice in Late Antiquity and the Early Middle Ages*, ed. A. Rio (London: Centre for Hellenic Studies, 2011), 155–203, at 160–161; see also 165 and n. 32 on the insufficiencies of Kern's thesis, and the intriguing association of this school of thought with colonial preconceptions of customary law.

lasted into the reign of Charles the Bald.[8] Carolingian capitularies intended as addenda to the national laws survive; nothing suggests that the Carolingian rulers were out of step with prevailing convictions in issuing such texts.

Where the ninth century parts company with the nineteenth is in the related modern expectations that law must arise from some formal and publically visible act or ceremony and, secondly, that its written form must reflect these circumstances of its genesis. Modern scholarship has confronted and refuted both assumptions. The texts of chief significance in this respect are the Carolingian capitularies, which survive in forms covering the gamut from punctiliously subscribed and dated documents reminiscent of royal charters to scrappy lists of matters for discussion at forthcoming meetings of the court and summary transcriptions of decisions and orders for the benefit of royal officers and other bearers of responsibility across the Empire. No original capitulary survives, but the assumption that there must have been a definitive original for every such text is in any case weak;[9] although the Carolingians had high expectations of what authoritative texts could achieve by way of Christian discipline in accordance with divine justice – expectations which in part explain their preoccupation with correcting and supplementing the *leges* – the most important unifying characteristic of the capitularies is the fact that they communicated the royal will, whether this was articulated in the course of formal, public consultations in synods and meetings of the court, in the aftermath of such discussions, or entirely independently of such assemblies. Rather than ask whether a given text was publically or privately produced, and whether the dispositions contained in it were made by a full assembly, a ruler alone, or any gradation on the spectrum between the two, Christina Pössel's term "royal sponsorship" seems more sensitive to the manifold ways and degrees in which various capitularies reflected royal authority, such that the grounds of normativity shifted from case to case.[10] As Hubert Mordek put it, capitulary legislation was messy, implying that for the Carolingians, at least in the early phase of their capitulary legislation including the entire reign of Charlemagne, the validity of a text arose not from formal criteria but rather from its "objective authenticity in the sense that its contents accorded with the

8 Ibid., 161.

9 See, however, McKitterick, "Zur Herstellung von Kapitularien," 7. If I understand Professor McKitterick's point aright, she does not claim that *every* capitulary started life in chancery-hand.

10 C. Pössel, "Authors and Recipients of Carolingian Capitularies, 779–829," in *Texts and Identities in the Early Middle Ages,* ed. R. Corradini, R. Meens and C. Pössel, Forschungen zur Geschichte des Mittelalters 12 (Vienna: Austrian Academy of Sciences, 2006), 253–274 at 266–267.

right order of things."[11] The only collections of Carolingian capitularies were made on private initiative.[12] The most successful, that of Ansegis, was adopted by the royal court for convenience's sake and in its limited coverage of only twenty-six texts testifies to the exiguous holdings of such documents at the court, for it was from these that Ansegis worked.[13] Although Louis the Pious insisted that incomplete copies of certain dispositions were emended and supplemented,[14] although he insisted as his father had done that correct copies were kept at court,[15] and although Charles the Bald made exemplars of capitularies, held at court, available for transcription, the authority of such documents – whether as isolated, free-standing capitularies or as collections of same – was emphatically not contingent upon their shape and precise provenance as texts.[16] This is a salutary lesson. Convictions about the fitting form of a proper piece of legislation fed into modern editorial practice and are therefore apt to influence historical interpretation even now.[17] From the cloudy variety of the surviving records certain texts were resolved and isolated as possessing programmatic importance over others. Something of the nineteenth-century codification mentality inflected this entire procedure because the scrappy and the terse tended to be interpreted as deriving from, or were

11 H. Mordek, "Karolingische Kapitularien," in *Überlieferung und Geltung normativer Texte des frühen und hohen Mittelalters*, ed. H. Mordek, Quellen und Forschungen zum Recht im Mittelalter 4 (Sigmaringen: Jan Thorbecke Verlag, 1986), 25–50 at 30 and for the precise statement paraphrased, 35; McKitterick, "Zur Herstellung von Kapitularien," 8. The comments of R. Pokorny, "Eine Brief-Instruktion aus dem Hofkreis Karls des Großen an einen geistlichen Missus," *Deutsches Archiv für Erforschung des Mittelalters* 52 (1996), 57–83 at 78 n. 93 should, however, give pause for thought, implying as they do a very different state of affairs.

12 Mordek, "Karolingische Kapitularien," 37 and n. 66.

13 Ibid., 37–38; *Die Kapitulariensammlung des Ansegis*, ed. G. Schmitz, MGH, Capitularia regum francorum, nova series I (Hannover, 1996); McKitterick, "Zur Herstellung von Kapitularien," 6–7; S. Airlie, "'For It is Written in the Law': Ansegis and the Writing of Carolingian Royal Authority," in *Early Medieval Studies in Memory of Patrick Wormald*, ed. S.D. Baxter et al. (Farnham: Ashgate, 2009), 219–235.

14 Mordek, "Karolingische Kapitularien," 35.

15 Ibid., 37, and 36–37 for doubts about the regular existence of such copies, and the same author's "Fränkische Kapitularien und Kapitulariensammlungen," in H. Mordek, *Studien zur fränkischen Herrschergesetzgebung. Aufsätze über Kapitularien und Kapitulariensammlungen ausgewählt zum 60. Geburtstag* (Frankfurt-am-Main: Lang, 2000), 1–53, at 6 and 30. For a more sanguine evaluation of the effects of such chancery copies under Louis and Charles, see McKitterick, "Zur Herstellung von Kapitularien," 7–12.

16 Ibid.

17 Pössel, "Authors and Recipients," 260.

treated as incomprehensible as free-standing documents without, the presumptively basic or programmatic.[18] Any productive reconsideration of the codification of law in the early Middle Ages must proceed from postulates quite different from those of nineteenth-century scholars, prodigious though their achievements undoubtedly were.

In the eleventh century, a sudden proliferation of ecclesiastical legal compilations took place in Europe. Canonical collections were produced at a number of centres in Italy, France, Spain and Germany. The masterful *Histoire des collections canoniques en Occident* by Paul Fournier and Gabriel Le Bras[19] is concerned principally with this period, in which the number of such collections peaked dramatically.[20] During the Gregorian reform papal ideology embraced the twin tactic of legalising institutions and centralising powers of governance. No rules were to be observed which did not emanate from the Holy See, either directly as new legislation or indirectly as reinforcement of anciently accepted norms. Intellectuals turned the archives of the Lateran upside down in search of ancient authorities by means of which to reform the customs of a corrupted clergy across an entire continent. Before the age of Gregory VII things had been very different. Legal texts, both ecclesiastical and secular, had been gathered in various collections, but the issuing authority, the formal "legislative" origin of these texts, was not of ultimate importance. The most widely used and distributed collection of decretals was, in fact, the forged Pseudo-Isidorian Decretals,[21] a curious mélange which presented as law diverse texts drawn from every type of source and written by every kind of ecclesiastical author: theologians, historians, Church fathers – texts which were then charged with normative authority by means of attribution to the early popes. The Pseudo-Isidorian Decretals in fact represent the utter negation – the perfect antitype – of a legislator's

18 Innes, "Charlemagne, Justice and Written Law," 172, 195–198; warnings in this sense already appear in R. McKitterick, *Charlemagne. The Formation of a European Identity* (Cambridge: Cambridge University Press, 2008), 234; Mordek, "Karolingische Kapitularien," 25 (an injunction to accept the "gutmütige Breite" of the evidence).

19 P. Fournier and G. Le Bras, *Histoire des collections canoniques en Occident dépuis les fausses Décrétales jusqu'au Décret de Gratien* (Paris: Sirey, 1931 and 1932; repr. Aalen: Scientia, 1972).

20 L. Kéry, *Canonical collections of the Early Middle Ages (ca 400–1140). A Bibliographical Guide to the Manuscripts and Literature* (Washington, DC: Catholic University of America Press, 1999).

21 *Decretales Pseudo-Isidorianae et Capitula Angilramni*, ed. P. Hinschius (Leipzig: B. Tauchnitz, 1863; repr. Aalen: Scientia, 1963); H. Fuhrmann, *Einfluss und Verbreitung der pseudoisidorischen Fälschungen. Von Ihrem Auftauchen bis in die neuere Zeit*, MGH Schriften, 24.1–24.3 (Stuttgart, 1972).

codification: a private collector or group of private collectors produced them, and their authority does not arise from any formal act of promulgation, but from the truth apparently contained in the text, an important contributing factor to which truth was undoubtedly the supposed age of many of the forgeries and their pretended authorship – earlier popes – but only one factor. Adopting a phrase from seventeenth-century jurisprudence, one could sum up by saying that the legal force of Pseudo-Isidore consisted in the internal *veritas* of the text rather than in its external *auctoritas*, which in the case of this grand falsification was of course almost completely fictitious.[22] This conception, or something like it, of what constituted a legal norm also influenced collections of secular law, but here the sheer age of the Church made an important difference. We have already touched upon the Carolingian capitularies: Ansegis employed just the catholic benevolence and tolerance in choosing texts for his own compilation which medievalists nowadays enjoin upon their colleagues as they seek to interpret such texts, and the same goes for the other legal collections: the choice was left to the compiler. As a result, the textual transmission is varied in the extreme, such that every manuscript represents a *unicum*, containing as it does a set of texts particular to that manuscript alone. But Ansegis must have thought his sources were all expressive of the will of the ruler, and his sources were homogeneous and monolithic in comparison with the canon law collections.

The Gregorian reform brought a major change in this respect. The new emphasis placed on the power of the pope led inevitably to an emphasis on the formal force of legal norms: the *auctoritas* deriving from the ruler became at least as important as the objective *veritas* of the laws.[23] This was tantamount to a rediscovery of legislative power in the service of papally driven ecclesiastical

22 G. Constable, "Forgery and Plagiarism in the Middle Ages," *Archiv für Diplomatik* 19 (1983), 1–41; E.A.R. Brown, "*Falsitas pia sive reprehensibilis*. Medieval Forgeries and their Intentions," in *Fälschungen im Mittelalter*, Internationaler Kongress der Monumenta Germaniae Historica (Munich, 16.–19. September 1986, I, Hannover 1988) = MGH Schriften, 33.1, 101–119.

23 Yves Congar offers an elegant outline of the permanent tension in the Church between *veritas* – given to the whole of the *ecclesia* – and *auctoritas*, an attribute of the ecclesiastical ruler. Speaking of the passage from the *traditio passiva* to a *traditio activa*, that is to the "teaching Church," he quotes a late passage of Thomas Stapleton (d. 1598): "In doctrina fidei non quid dicatur, sed quis loquetur a fideli populo attendendum est." Cf. Y. Congar, "La 'réception' comme réalité ecclésiologique" (1972), now in idem, *Droit ancien et structures ecclésiales* (London: Variorum, 1982), XI, 392. Stapleton's statement remains well within the Catholic tradition: already in the *Collectio Dionisiana* a text attributed to pope Celestine I has it that "docendus est populus, non sequendus": cf. PL 67, col. 268C.

reform. On this matter, of course, the most important model for the Church was Justinian, the legislator *par excellence*. Gregory presented himself as a kind of Emperor of the Church, even if there is no evidence that he ever thought of promulgating a great codification on the model of Justinian. Although the *Dictatus papae* have very much the look of a set of rubrics for an unrealised collection of canon law to be compiled from the usual authorities,[24] as far as we know neither Gregory nor any other influential reformer even considered issuing a new code. However, it is probable that the hunt for ancient, true and authoritative texts in the libraries and archives led to the rediscovery in the west of those parts of Justinian's *Corpus iuris* which had fallen out of circulation centuries previously, in all probability soon after their promulgation.[25]

The history of the rediscovery and rearranging of the *Corpus iuris* is not important in the present context. Far more significant is the exemplary role of the *Corpus iuris* in future centuries. Justinian's law quickly and enduringly provided the model of codification and a powerful example of what legislation should look like in the Western world. The model was invented by Theodosius II and adapted by Justinian with the aim of halting the decay of the legal system of the Empire.[26] With lawyers as professionals disappearing, and disorder rife, the two great codifications were a means of centring legal practice around the power of the Emperor. With the *Digest* of Justinian, indeed, even the ancient wisdom of the classical lawyers became an expression of the legislative power of the *princeps*: "he who completes an undertaking is more worthy of praise than he who initiates it"; "what power does antiquity have to bind us?"[27] Forbidding all jurisprudential interpretation and even the slightest alteration in the wording of the compilation, both Theodosius and Justinian established the outlines for a form of codification that was intended to be

24 As suggested by G.B. Borino, "Un'ipotesi sul 'Dictatus Papae' di Gregorio VII," *Archivio della Società Romana di Storia Patria* NS 10 (1944), 237–252; K. Hoffmann, "Der 'Dictatus Papae' Gregors VII als Index einer Kanonessammlung?" *Studi Gregoriani* 1 (1947), 531–537; S. Kuttner, "Liber Canonicus. A Note on 'Dictatus Papae' c. 17," *Studia Gregoriana* 2 (1947), 387–440; repr. in Kuttner, *The History of Ideas and Doctrines of Canon Law in the Middle Ages* (London: Variorum, 1980), II.

25 Following here the account given in W.P. Müller, "The Recovery of Justinian's Digest in the Middle Ages," *Bulletin of Medieval Canon Law* [hereafter *BMCL*] 20 (1990), 1–29; C.M. Radding and A. Ciaralli, *The Corpus Iuris Civilis in the Middle Ages* (Leiden: Brill, 2007).

26 See now on the codification of Theodosius A.J.B. Sirks, *The Theodosian Code. A Study* (Friedrichsdorf: Éditions Tortuga, 2007).

27 Both quotations are from Justinian's constitution *Deo auctore*, ordering the composition of the Digest: see C. 1.17.1.

unchanging, applied by magistrates as it stood, without interpretation.[28] But in its medieval afterlife, the great codification provided the materials for a historical development that ran directly contrary to these original aims. The more or less textually stable collection of law became the necessary point of departure for an entirely new legal system, in which the force of the codification resided to a great extent in the activity of the schools, in learned exegesis of the sort Justinian had sought to preempt, and the authority of the school was a direct result of authority of that codification.

Precisely this dynamic governed the fortunes of the most successful private compilation of canon law of the entire middle ages, Gratian's *Harmony of Discordant Canons*, familiarly and universally known as the *Decretum*. Despite the careful search for the original texts of canon law and for their "authentic" promulgation by a universal power; despite the sharpened focus on the papacy as the universal legislator in the Church, the variety and inconsistency in the outpouring of canon law prompted by the reform movement gives rather the impression of business as usual because the collections of canons produced in support of Gregorian reform circulated in such varying forms. Either they were copied in different recensions distinguished one from another by additions and omissions, or they are transmitted by only one or two manuscripts. Furthermore, the number of collections in circulation prevented the creation of a unitary and consistent legal doctrine, because not all the relevant texts were available everywhere, with the result that the legal outlines of a particular ecclesiastical institution could change from time to time and from region to region. It is the most important aspect of the twelfth-century changes in legal culture that this state of affairs began to change. The pressure came not from the papacy, despite the implications of Gregory's *Dictatus papae*, but from another quarter entirely. Gratian's *Decretum* would become the most influential collection of ecclesiastical law in the Western Church. The work certainly circulated in different versions to begin with, but around 1140 the text gelled definitively, and a series of apparatuses of glosses as well as free-standing commentaries or *summae* started to be compiled to explain it.[29] A legal school was

28 C.Th., "Gesta Senatus de Theodosiano publicando," in *Codex Theodosianus*, ed. Th. Mommsen (Berlin: Weidmann, 1905), 1–4; L. Atzeri, *Gesta senatus romani de Theodosiano publicando. Il codice Teodosiano e la sua diffusione ufficiale in occidente* (Berlin: Duncker & Humbolt, 2008); and ead., "Volterra e la 'costituzione' introduttiva del Codice Teodosiano. Un riesame," *Initium. Revista catalana d'història del dret* 13 (2008), 3–46.

29 A. Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000); P. Landau, "Patristische Texte in den beiden Rezensionen des Decretum Gratiani," *BMCL* NS 23 (1999), 77–84; M.E. Sommar, "Gratian's Causa VII and the Multiple Recension Theories," *BMCL* NS 24 (1999), 78–96; C. Larrainzar, "El borrador de la 'concordia' de

born, and a legal school had to have a settled text to work properly: to produce sets of glosses, to deal with abstract constructions based on a known set of legal statutes. That is also when a new practice of reproducing texts was invented. The system of *exemplar* and *pecia* guaranteed the uniform reproduction of legal books, avoiding by definition the additions and other changes legion in the age of monastic manuscript reproduction.

While this new system, consisting essentially in the interplay between a broadly-speaking untouchable text and a luxuriance of commentary and exegesis, would enjoy extraordinary success with the flourishing of the medieval universities and the closely related birth of the legal professions, it was in the Church, once again, that the story of codification resumed at the beginning of the thirteenth century. The first officially commissioned and promulgated collection of papal law of the later middle ages contained decretals sent by Innocent III during the first eleven years of his pontificate, and would be entitled *Decretales Domini Innocentii Papae*. Its declared purpose was to provide texts that lawyers could use both in court and the schoolroom in the certainty that those texts were genuine. The short letter (incipit: *Devotioni vestrae*) which is regarded as the formal promulgation of the collection was sent to the "masters and scholars resident at Bologna" as a kind of covering letter, bearing the papal bull. The collection was arranged systematically by its compiler, the subdeacon Peter of Benevento, into five books, of which Book I defines and regulates the sources of ecclesiastical law and the jurisdictions of various ecclesiastical officers, Book II the *ordo iudiciarius* and the technical problems arising from forensic life, Book III the clergy and their property, Book IV matrimony and matters arising from it, and Book V misdemeanours along with certain types of malefactor.[30] Each book is divided into rubricated sections. Importantly for our purposes, the book does not give full texts of the original papal letters; the originals

Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (= Sg)," *Ius ecclesiae. Rivista internazionale di diritto canonico* 11 (1999), 593–666; idem, "La formación del Decreto de Graciano por etapas," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* [hereafter ZRG/Kan.] 118 (2001), 67–83; J.M. Viejo-Ximénez, "La composición del decreto de Graciano," *Ius canonicum* 90 (2005), 431–485. A provisional resumé of the state of the question is given by A. Winroth, "Recent Work on the Making of Gratian's *Decretum*," *BMCL* NS 26 (2004–2006), 1–29. See the same issue of *BMCL* for further articles on the same topics.

30 The model for the systematic arrangement of decretal collections was provided by the *Compilatio prima* of Bernardus Papiensis, in 1190; see *Quinque Compilationes Antiquae*, ed. Ae. Friedberg (Leipzig: Tauchnitz, 1882; repr. Graz: Akademische Druck- und Verlagsanstalt, 1956). For Bernardus' own *summa* on the text, see *Bernardi Papiensis Summa Decretalium*, ed. E.Ad.Th. Laspeyres (Regensburg: J. Manz, 1860; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1956).

have been pruned so as to shorten them of juristically uninteresting material in order that their legal significance may emerge clearly and quickly. A collection of papal letters such as this was more than just a collection of papal letters, in other words; it was a condensed distillate of administrative or executive documents. It is such editorial intervention, this legalistic re-visiting of the circumstances which had first prompted the issue of a given decretal and the consequent focusing activity of the compiler or compilers, which justifies our retention of the expression "codification" despite its otherwise obvious incongruity with medieval practice and intellectual habits. One predictable result of such revisions was that decretals could change in meaning as they entered their second life, as they ceased to be letters and became components of a collection of law. In other cases, so much circumstantial detail was excised in the interests of brevity that clarity occasionally suffered, and later canonists had laboriously to reconstruct (with varying success and plausibility) those circumstances in order to make sense of what the compilers had left them.

There are many reasons why Innocent III's decretal collection is such an instructive case; several of them concern the limitations of Innocent's ambitions. In contrast with Justinian's legislative programme as outlined in the constitutions *Deo auctore*, *Tanta* and *Cordi nobis*, this text was not intended to displace other sources of law nor even older texts from forensic or educational argument; neither did it assert finality – these decretals were never intended by Innocent to be the last word. Even when viewed against its immediate background of the early thirteenth century, Innocent's decretal collection emerges in some respects as a typical contribution to a tradition of scholarship and practice already well-established wholly independently of governmental initiatives. Medieval canonists called it not "Innocent's decretals" but *Compilatio tertia*, even if it was in fact the second of the series of five collections of papal decretals to gain currency in the schools after the adoption of the *Decretum Gratiani*. In fact, this first officially promulgated "codification" of papal letters was intended to become a part of but not to replace the law taught by the standard-setting law schools. A first collection of papal letters had been compiled on private initiative in 1190 by Bernardus Papiensis. Then, shortly after Innocent's decretals (1210–1212) Johannes Galensis set about collecting those decretals issued between the appearance of Bernardus Papiensis' *Compilatio prima* and Innocent's so-called *Compilatio tertia*, with the at first confusing result that Johannes Galensis' collection became known as the *Compilatio secunda*, even though it actually appeared after the *tertia*, because it contains older material than the *tertia*.[31] The architecture or systematic arrangement of

31 *Quinque Compilationes Antiquae*, 66–104.

Innocent's *Compilatio tertia* had been established by Bernardus Papiensis, and would be followed with only minor additions and alterations to the order of rubrics for the rest of the Middle Ages. So: Bernardus' *Compilatio prima* was joined but certainly not displaced by *Compilatio tertia*, which was in turn supplemented after a couple of years by Johannes Galensis' *Compilatio secunda*. A *quarta* and *quinta* would follow. Both were commissioned by popes, but only one (the *quinta*) was actually accepted by its patron, Honorius III.[32] In other words, Innocent III's decretals neither cancelled the past nor limited the future. When Gregory IX published the far larger *Liber Extravagantium* – or "Extra" – in 1234, the main building-blocks of his new and unprecedentedly lengthy book of decretals were these five older compilations, so although it is correct to say that the *Extra* superseded its predecessors, it did so primarily by swallowing them.[33]

Not only the intellectual system of decretal collections was inherited by the papal government from private individuals, but the very practice of collecting decretals in the first place.[34] Bernardus Papiensis' *Compilatio prima* (his own title for it was *Breviarium*) was only the first systematically arranged decretal collection to achieve widespread recognition *in the schools*. Outside the schools there had been many – literally dozens – of private collections, some chaotic, some chronological in arrangement, some even exhibiting the same efforts to divide the material into thematic blocks as Bernardus' vastly successful creation.[35] Some of these even served as the basis of teaching and exegesis without gaining such broad currency as Bernardus' collection. The "Drang zur

32 Ibid., 135–150; 151–186; K. Pennington, "Decretal Collections 1190–1234," in *The History of Medieval Canon Law in the Classical Period, 1140–1234*, ed. W. Hartmann and K. Pennington (Washington, DC: Catholic University of America Press, 2008), 293–317.

33 Edition: *Corpus Iuris Canonici*, ed. Ae. Friedberg 2 vols (Leipzig: Tauchnitz, 1879; repr. Graz: Akademische Druck- u. Verlagsanstalt, 1959), II: *Decretalium Collectiones*.

34 The most modern resumés in English: C. Duggan, "Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*: The Making of the New Case Law," in *History of Medieval Canon Law*, ed. Hartmann and Pennington, 246–292; and Pennington, "Decretal Collections."

35 The literature is vast. See for an introduction Pennington, "Decretal Collections"; A.J. Duggan, "*De consultationibus tuis*: The Role of the Episcopal Consultation in the Shaping of Canon Law in the Twelfth Century," in *Bishops, Texts and the Use of Canon Law in the Earlier Middle Ages: Studies in Honour of Martin Brett*, ed. B.C. Brasington and K.G. Cushing (Aldershot: Ashgate, 2008), 191–214; P. Landau, "Die Entstehung der systematischen Dekretalensammlungen und die europäische Kanonistik des 12. Jahrhunderts," *ZRG/Kan.* 65 (1979), 120–148; idem, "Rechtsfortbildung im Dekretalenrecht. Typen und Funktionen der Dekretalen des 12. Jahrhunderts," *ZRG/Kan.* 86 (2000), 86–131; A. Gouron, "Utriusque partis allegationibus auditis," *Recueil de mémoires et travaux publié par la Société d'histoire du droit et des institutions des anciens pays de droit écrit*, fasc. 16

Kodifikation" of the early thirteenth century was therefore only a late stage in the history of decretal collections. Private users – often and perhaps typically papal judges delegate – with practical needs had led the way ever since the pontificate of Alexander III (1159–1181). There is still learned disagreement about the precise legal nature of official collections of papal decretals. Stephan Kuttner argued that in the period up to and including 1234 papally sponsored collections enjoyed no greater intrinsic authority than private compilations.[36] Kuttner did note an important shift in emphasis in the *Liber Extra* itself toward papal letters which were really general pronouncements of legal principle and which therefore deviated from the former model of decretal pronouncements, a trend which became more marked with Boniface VIII's *Liber Sextus* of 1298. This is an important development, but does not in itself qualify the point of principal importance: official collections were not published with the intention of supplanting, let alone by legislative *fiat*, the existing texts. The manner in which such collections were used tends to support this thesis: the papally approved collections were just as vulnerable to amendment by the professional public as any private compilation. Kenneth Pennington long ago identified additions and alterations to the texts in *Compilatio tertia*, which indicate the existence of a specifically French recension of Innocent's decretals, for example.[37] It would be rash, therefore, to conclude from the very appearance of papally sponsored and approved collections such as *Compilatio tertia* that the law they contained was somehow more authoritative than that contained in other collections, or that they were treated with any especial reverence simply as texts by their users.

Yet, still, some doubts remain. One might regard as a separate matter entirely the question which the appearance of papally sponsored collections begs concerning the relationship between individual decretal letters and those included in – the expression is purposely vague – "standard" collections. However, some of the medieval canonists' own questions show that the two issues – the relationship between private and papal collections on the one hand, and the relationship between free-standing decretal letters and compilations of decretals on the other – could coalesce. In a gloss originally published by Kenneth

(Montpellier, 1994); repr. with same pagination in idem, *Juristes et droits savants: Bologne et la France médiévale* no. XVI (Aldershot: Ashgate, 2000), 35–45.

36 S. Kuttner, "Quelques observations sur l'autorité des collections canoniques dans le droit classique de l'Église," in *Actes du Congrès de droit canonique, Paris 22–26 Avril 1947* (Paris: Letouzey et Ané, 1950), 305–312, repr. S. Kuttner, *Medieval Councils, Decretals and Collections of Canon Law* (London: Variorum, 1980), I.

37 K. Pennington, "The French Recension of *Compilatio Tertia*," *BMCL* NS 5 (1975), 53–71.

Pennington and reproduced for discussion by Giulio Silano,[38] Tancred observed that a decretal not included in "these compilations" could serve as the foundation of a legal judgement so long as there was no doubt as to its authenticity. The plural is interesting: *has compilationes*. Tancred's gloss relates to Innocent III's letter already mentioned, *Devotioni vestrae*, with which the pope communicated his compilation to the masters and scholars of Bologna. In other words, Tancred did not frame quite the question we have been discussing, for if the papal sponsorship of *Compilatio tertia* had been decisive in his mind, he would perhaps have referred in the singular to the one relevant compilation. This detail might therefore be cited in support of the prevailing view amongst historians outlined above. Johannes Teutonicus' gloss to the same letter answers what at first sight appears to be the same question as Tancred asked, but which is not entirely the same, for he answers in the singular: "this compilation (*hac compilatione*)."[39] Aside from this, Giulio Silano's carefully formulated reservations deserve repetition. Canonists indeed added to and otherwise amended *Compilatio tertia* (and *Quinta*) but appear not to have pressed ahead – as a previous generation of canonists would have done – with their own entirely independent collections.[40] Moreover, the phraseology of Innocent III's letter *Devotioni vestrae* did not make the question or questions we have just encountered in the glosses of Tancred and Johannes Teutonicus unavoidable. Innocent III was concerned with textual authenticity, not exclusive legal authority.[41] Yet they asked them anyway. Honorius III's prologue to his own *Compilatio quinta* is replete with allusions to Justinian's *Corpus iuris civilis* and, most significantly, to the Constitution *Tanta*, which is where Justinian claimed exclusive authority for his new compilation.[42] In the background, then, in the expectations of the canonists and in the minds

38 Pennington, "French Recension of *Compilatio Tertia*," 65, n. 18; G. Silano, "Of Sleep and Sleeplessness: The Papacy and the Law, 1150–1300," in *The Religious Roles of the Papacy: Ideals and Realities, 1150–1300*, ed. C. Ryan (Toronto: Pontifical Institute of Mediaeval Studies, 1989), 343–361, at 358 n. 62.

39 The slight difference has gone un-noticed. For the original edition of the gloss, see K. Pennington, *Johannis Teutonici Apparatus glossarum in Compilationem tertiam*, Monumenta Iuris Canonici, ser. A: Corpus Glossatorum 3 (Città del Vaticano: Biblioteca apostolica vaticana, 1981), 1.

40 Silano, "Of Sleep and Sleeplessness," 359 (for this and the following point).

41 H.J. Becker, "Gesetzgebung und päpstlicher Gesetzgebungsanspruch von Innozenz III. bis zu Innozenz IV," in *Gli inizi del diritto pubblico, 2. Da Federico I a Federico II/Die Anfänge des öffentlichen Rechts, 2. Von Friedrich Barbarossa zu Friedrich II*, ed. G. Dilcher and D. Quaglioni (Bologna: Il Mulino/Berlin: Duncker & Humblot, 2008), 157–193, at 164–165.

42 Text (incipit: *Novae causarum*): *Quinque Compilationes Antiquae*, 151; text reproduced with analysis: Silano, "Of Sleep and Sleeplessness," 360–361 and nn. 65–69.

of the popes themselves, Justinian's model of the exclusive and harmonious compilation of law seems to have been a powerful stimulus. But even Gregory IX's more ambitious project which came to fruition in the *Liber Extra* demonstrates that the pope was not attempting something Justinianic in the specific sense of interposing himself between the past and present as the now sole authority behind the law.[43] Boniface VIII was the first to do that. Although even he did not presume to nullify the authority of Gregory IX's *Liber Extra* when he published his own *Liber Sextus* in 1298 – whereas pre-existing compilations were at the top of Justinian's list of targets – Boniface did insist that all decretals published since the appearance of the *Extra* and which were not incorporated in the *Sext* were no longer to be applied.[44] The very clarity of Boniface's prohibition reveals how different the postulates were at the end of the thirteenth century from those underlying the *Extra*.

In much of this, the factor of crucial importance was the stimulus from the professionals.[45] "Codification" began and for decades continued as a series of discrete private initiatives. Before one asks what interests were served by such labours, it is important to appreciate the result, which is of central relevance. Collection of texts encouraged collation and comparison of texts, which in turn led to greater consistency. In this respect, papal decretals were certainly as textually stable as the canons of some of the recent Church councils, which, until Lateran IV in 1215, were seemingly treated by the popes (Innocent II at Lateran II and Alexander III at Lateran III) with to our eyes surprising nonchalance.[46] No consistent efforts were made, or so it appears from recent research, to ensure that reliable copies of the canons were circulated throughout Europe. But by the later twelfth century, practitioners and teachers were beginning to take such matters seriously to the extent that eventually – with Innocent III – the popes themselves learned to appreciate the importance of orderly and periodic "housecleaning" in the collection and re-issue of their own decretals

43 The summary by Becker, "Päpstliche Gesetzgebung," 170–176 is exemplary.

44 Becker, "Päpstliche Gesetzgebung," 181, quoting the promulgation bull *Sacrosanctae Romanae ecclesiae*, for which see *Corpus Iuris Canonici*, ed. Friedberg, II, 935.

45 A comment in this sense ibid., 168.

46 C. Leonardi, "Per la tradizione dei concili di Ardara, Lateranensi I–II, e Tolosa," *Bullettino dell'istituto storico italiano per il medio evo e archivio muratoriano* 75 (1963), 57–70, at 65 ff.; S. Kuttner, "Brief Notes: Concerning the Canons of the Third Lateran Council (from an unpublished dissertation by W. Herold)," *Traditio* 13 (1957), 505–506; D. Summerlin, *The Canons of the Third Lateran Council of 1179, Their Origins and Reception, ca. 1148–ca. 1191* (unpublished PhD dissertation: Cambridge University, 2012), Chapter 4 (provisional pagination: 141–203).

in easily consultable form.[47] Parenthetically, that basic shape of decretal collections did not change until the publication of the first modern codification of canon law in 1917; even the Clementine Constitutions of Clement V, which were published by his successor John XXII in 1317 and only contain just over one hundred decretals (as opposed to the 1971 separate chapters which constitute Gregory IX's *Liber Extra*) are punctiliously arranged according to this five-book model, with the rubrics within each book following one another in the same order as in previous collections.

Once collected, such texts could easily attract marginal and interlinear glosses. Institutional continuity, the survival from one generation to the next of expert knowledge, consensus within the limits of the humanly possible about the applicability and relevance of certain norms and rules across an entire continent, in short, everything we associate with institutional fixity within and by means of the law was not solely an outcome of legislative activity by the popes, but also of academic attention. By 1200 or so, canon lawyers did not typically own a collection or two of decretals; they owned *glossed* decretal collections. These glosses, which travelled in remarkably consistent form all over Europe and were cited in court and in memoranda written to advise judges and litigants, emanated from a remarkably tight-knit group of scholars. A lawyer or administrator – perhaps an *officialis* of a bishop – owning copies of the first three *Compilationes antiquae* might easily find the appropriate apparatus of glosses by the Bolognese canonist Tancred in the margin of each. Legal exegesis and analysis of Innocent III's *Compilatio tertia* were not restricted by the contents of that single collection, but embraced the contents of the *Prima* and *Secunda*, as well as the Gratian's *Decretum*. Thanks to the methods of scholastic education and the singular circumstance of geographical concentration – all of the standard-setting canonists between 1190 and the 1250s taught at Bologna, several of them at the same time – a typical apparatus of such glosses would address conflicting opinions, or acknowledge contributions by other canonists, some of them still living, others already dead or no longer teaching because managing a diocese on the other side of Europe, having been promoted to the episcopal dignity.

Scholastic law was an academic conversation with many interlocutors, which preserved opinion – even deviant and minority opinion, although not as

47 A significant comment on the relations between legislator and exegetes by M. Bertram, "Gregorio IX, Innocenzo IV e Federico II: tre legislatori a confronto," in *Colendo iustitiam et iura condendo … Federico II legislatore del Regno di Sicilia nell'Europa del duecento. Per una storia comparata delle codificazioni europee*, ed. A. Romano (Rome: Edizioni de Luca, 1997), 11–28, at 25: the university became ever more the senior partner.

frequently as we historians might wish – from generation to generation. It was this aspic of academic commentary, of comparison, contrast, resolution and disputation, which enhanced institutional continuity. The reasons are at least in part sociological, if such a portentous term be permitted as a description of a process which, once perceived, becomes so obvious that it is impossible *not* to think of it when approaching these and related problems about governmental growth in the later Middle Ages. By the early thirteenth century, the nascent universities only awarded certain professional qualifications after long and arduous study. Membership in what was basically the most exacting and powerful guild in Europe was gradated. One could depart as a simple bachelor (*baccalaureus*) or proceed to become a *magister* (the primary meaning of which was not, therefore, "teacher" but "master" as in a journeyman craftsman who might just as easily be a leather-worker, a jeweller or furrier as a lawyer). The few who could afford the time outside gainful employment became doctors (here the guild vocabulary ran out).[48] The investment of time and expert energies in attaining to these distinctions must itself have been a powerful force of conservatism; innovation would understandably take place within the limits imposed by the individually trivial but collectively gigantic weight of learned opinion, the main stream of which had legal force in later medieval courts and classrooms as *communis opinio*.

Outside canon law, we can observe processes at work, leading to greater consistency of practice and vocabulary across different regions of Western Europe, which have much in common with those outlined above in relation to papal decretals. An especially important example is the rise to continental popularity and influence of one particular set of feudal customs. By the early fourteenth century at the latest, lawyers all over Europe trained in the Roman-canon law had at their disposal a manual known variously although not exhaustively as the *Liber feudorum*, *Libri feudorum*, *Consuetudines feudorum*.[49] This text set out and explained some fundamental distinctions for the analysis of fiefs as well as the relationship between lords and vassals, and provided some elementary procedural rules that ought to govern litigation over fiefs. The book also relates and summarises various debates between named lawyers and judges on especially controversial points relating to feudal jurisdiction and feudal property. By the later thirteenth century this short manual was

48 J.A. Brundage, *The Medieval Origins of the Legal Profession. Canonists, Civilians and Courts* (Chicago: University of Chicago Press, 2008), 219–370.

49 K. Lehmann, *Das langobardische Lehnrecht. Handschriften, Textentwicklung, ältester Text und Vulgattext nebst den capitula extraordinaria* (Göttingen: Dieterich, 1896); repr. K. Lehmann, *Consuetudines feudorum*, editio altera, by K.A. Eckhardt (Aalen: Scientia, 1971).

being copied into manuscripts of Roman law as a matter of routine by university stationers. Its eventual home would be at the end of the *Novels* of Justinian, in their medieval vulgate form known as the *Authenticum*, which was divided into nine gatherings or "collationes" and to which the *Libri feudorum* were appended as the *Decima collatio* or *Decima collatio de feudis*. In common with the rest of the *Corpus iuris* this humble collection of feudal customs received the attentions of the glossators, two of whom in particular (Pillius de Medicina followed in the next generation by the great Accursius himself) composed an apparatus of glosses on the text. These two apparatus, fused and combined, became the Standard Gloss or *Glossa ordinaria* to the *Libri feudorum*.[50] Extra-curricular lectures were quite often held on this adjunct to the Roman law; if one includes the Standard Gloss itself, eight full-length *summae* or specialist commentaries appeared on the text by 1300, to be joined in the first decades of the fourteenth century by another much longer commentary.[51] Lawyers from Burgundy, Marseille, Bologna, Naples, and perhaps Pisa wrote these commentaries. Shorter works, in which the text and its glosses were cited, abounded, such as disputations and eventually professional opinions written for courts, rulers and litigants.

This is profoundly suggestive. The *Libri feudorum* originate from Pavia and Milan. In their earliest stratum, they go back perhaps to the 1120s.[52] They certainly describe the usages of courts in other cities of northern Italy too, several of which are mentioned at various points in the text. The authors were private individuals; when they can be identified, they always turn out to be consuls, or ex-consuls, of Pavia and Milan or their colleagues and hangers-on in the municipal courts of those cities.[53] If they held any more august form of public office it was as imperial notaries or, as an oddity of terminology bequeathed to the region by its peculiar history, *iudices domini imperatoris* (imperial judges, or variants on that title – even in cities traditionally hostile to the twelfth-century emperors). Their comments are explicitly limited to the customs and usages of the regions and courts they knew about and have no pretensions to be anything other than a guide to the locally perplexed on an important field of litigation on which the two great bodies of written law (Lombard and

50 P. Weimar, "Die Handschriften des Liber Feudorum und seine Glossen," *Rivista Internazionale di diritto comune* 1 (1990), 31–98.

51 G. Giordanengo, "Les Feudistes," in *El Dret Comú i Catalunya. Actes del II.on Simposi Internacional Barcelona*, ed. A.I. Ferreirós (Barcelona: Editorial Gráficas Signo, 1992), 67–139.

52 The earliest suggested dating is that of G. Giordanengo (before 1088): see Giordanengo, *Le Droit Féodal dans les Pays de Droit Écrit* (Rome: École Française de Rome, 1988), 125.

53 P. Classen, *Studium und Gesellschaft im Mittelalter*, in MGH Schriften 29, ed. J. Fried (Stuttgart: Hiersemann, 1983), esp. 50–51.

Roman) were almost entirely silent. Yet thanks to the attentions of the glossators of Roman law, starting with Pillius de Medicina, a graduate of Bologna but probably teaching at Modena by the time he encountered the *Libri feudorum*,[54] and decisively thanks to Accursius, this text gained pan-European authority as *the* standard text. The canonists seem to have been the first to cite the text in the course of routine teaching, however: Tancred – the author of those three popular apparatus of glosses on the *Compilatio Prima*, *Secunda* and *Tertia* of papal decretals, as well as of other influential works – referred to the *Libri feudorum* in his glosses on the decretals. His colleague and competitor Johannes Teutonicus referred to the text in his Standard Gloss to Gratian's *Decretum* as well as in his glosses to *Compilatio tertia*, as did the canonists and future bishops Vincentius Hispanus and Laurentius Hispanus.[55]

Regional variations across Western Europe in, say, the customs governing inheritance to fiefs are notorious to modern legal historians just as they were to thirteenth-century lawyers. There was no earthly reason why Lombard custom should be held in any especial regard in this or indeed any other respect. The decisive influence was not the content of this inelegant, chaotic and confusing collection. By the middle of the thirteenth century it did contain versions of several genuine (and sections of some other forged) imperial constitutions;[56] when it suited them later medieval jurists distinguished between these imperial texts, which they said possessed generally binding character, and the rest, which they claimed had customary force only in Lombardy.[57] But the fact remains that even these distinctions between the locally binding and the

54 On Pillius and his role in shaping the teaching method and the form of texts at the end of the 12th century see E. Cortese, *Il diritto nella storia medievale*, vol. II (Roma: Il Cigno, 1995), 145–195. For a useful synthesis, see the section on Pillius in H. Lange, *Römisches Recht im Mittelalter*, vol. I, *Die Glossatoren* (Munich: Beck, 1997), 226–238.

55 On some of these texts, see M.J. Ryan, "The Oath of Fealty and the Lawyers," in *Political Thought and the Realities of Power in the Middle Ages*, ed. J. Canning and O.G. Oexle (Göttingen: Vandenhoeck & Ruprecht, 1998), 211–228; and K. Pennington, "The Formation of the Jurisprudence of the Feudal Oath of Fealty," *Rivista internazionale di diritto comune* 15 (2004), 57–76, for several of whose many suggestions I am grateful.

56 LF 2.27, LF 2.52 (Sections II and III of which are of dubious authenticity), LF 2.53, LF 2.54(55), LF 2.55(56), LF 2.56(57). For the background to several of these texts see A. Karg, "Die kaiserliche 'Lehnsgesetzgebung' für Italien bis Roncaglia (1158)," in *Gli inizi del diritto pubblico. L'età di Federico Barbarossa: legislazione e scienza del diritto/Die Anfänge des öffentlichen Rechts. Gesetzgebung im Zeitalter Friedrich Barbarossas und das Gelehrte Recht*, ed. G. Dilcher and D. Quaglioni (Bologna: Il Mulino/Berlin: Duncker & Humblot, 2007), 199–228.

57 M.J. Ryan, "Zur Tradition des langobardischen Lehnrechts," in *Gli inizi del diritto pubblico: 2. Da Federico I a Federico II/Die Anfänge des öffentlichen Rechts, 2. Von Friedrich Barbarossa zu Friedrich II* (Bologna: Il Mulino/Berlin: Duncker und Humblot, 2008), 225–243.

generally binding were taken from the *customary* parts of the *Libri feudorum*.[58] The decisive influence was of course academic attention. By the thirteenth century, most lawyers needed texts with learned commentary – their professional training had made them dependent on them – and this collection of Lombard customs was adorned by the glosses of Accursius.

So far, then, the twelfth and early thirteenth centuries have yielded three similar but subtly different examples of how bodies of law that would long outlive the middle ages were put together. In the case of decretal collections, texts of unquestioned importance in court were collected by judges and advocates, taught in the most influential schools, provided with the paraphernalia of scholarship and re-circulated throughout Western Europe long before popes themselves thought it worth their while even to influence – certainly not at this moment to control – that process by promulgating entire collections of law. Secondly, we have noted the self-contained and very expert nature of academic commentary and exegesis which in common with all the disciplines of scholasticism encouraged a continuing engagement with the same ideas and arguments across generations, discouraged major methodological ruptures, and which quickly privileged received opinion as a force in argument – a further stimulus to stability. Finally, we have observed how an entirely private collection of short treatises about Lombard court practice became the standard description of how litigation over fiefs should be conducted. In none of these examples does governmental authority play more than a secondary role. It is time to turn to one last case where governmental initiative began the entire process.

In 1231 Frederick II promulgated for his kingdom of Sicily a collection of approximately 220 laws which were almost immediately referred to as *Constitutiones augustales* but which historians ordinarily call either the Constitutions of Melfi or *Liber Augustalis*, in which the assizes of the preceding Norman kings of Sicily were blended with his own new constitutions.[59] The agenda of royal legislation as outlined by Frederick in the opening constitution of the text is at first glance traditional, emphasis falling on the king's duty to maintain peace and justice, to protect the Church and, as a means of achieving both ends, to recover and consolidate his own rights.[60] Nevertheless, the text is

58 Ibid., 233–234 and nn. 35–36.

59 W. Stürner, *Die Konstitutionen Friedrichs II. für das Königreich Sizilien*, MGH, Constitutiones et acta publica imperatorum et regum, 2: Supplementum (Hannover, 1996). For what follows, see the concise treatment in W. Stürner, *Friedrich II*, vol. 2: *Der Kaiser 1220–1250* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1992 and 2000), 191–201.

60 So *The Liber Augustalis; or, Constitutions of Melfi, promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231*, ed. and trans. J.M. Powell (Syracuse, NY: Syracuse University Press, 1971), XIII–XXXVIII.

the first of its kind in later medieval Europe in explicitly absorbing older legislation and combining it with the new by re-promulgating it as law in a new arrangement, the binding authority of which was derived from Frederick's own authority.[61] He also issued a blanket nullification of all existing laws and customs contradicting the new legislation. The next attempt at something similar would have to wait until Alfonso X of Castile and the series of publications which would eventually constitute the *Siete Partidas*, but the difference between the two projects is already clear from this circumstance: the *Siete Partidas* were more of an unfolding undertaking, and in any case did not gain widespread acceptance in Castile until well into the fourteenth century.[62] By contrast, Frederick II's *Liber Augustalis* was intended to become the law of the kingdom immediately. Although Frederick's own later legislation shows that this hope was in many respects a delusion,[63] the ambition is not without significance even if it was – in the short term – partially thwarted by the intransigence of facts.

The law faculty at Frederick's own foundation, the university of Naples, did not teach the *Constitutiones* to generations of future justiciars and chancellors.[64] Unlike Innocent III and Gregory IX who sent their decretal compilations to Bologna, Frederick did not envisage his constitutions becoming the foundation of a curriculum. Nevertheless, after the Angevin conquest of the kingdom numerous *capitula* were added to the Frederician core, and the resulting corpus remained definitive of legal life in the subsequent history of the *Regno*.[65] But the *Regno* was in Italy and had much more in common with Italy than the mere existence of a harmonised and unitary body of royal

61 Stürner, *Friedrich II*, 2, 194.

62 A. Wolf, "Die Gesetzgebung der entstehenden Territorialstaaten," in *Handbuch der Quellen und Literatur zur neueren europäischen Privatrechtsgeschichte, I: Mittelalter*, ed. H. Coing (Munich: Beck, 1973), 517–800 at 671–673, repr. and revised as *Gesetzgebung in Europa, 1100–1500: zur Entstehung der Territorialstaaten* (Munich: Beck, 1996); J. Craddock, *The Legislative Works of Alfonso X, el Sabio: A Critical Bibliography* (London: Grant & Cutler, 1986); P.A. Linehan, *History and the Historians of Medieval Spain* (Oxford: Oxford University Press, 1993), 444, 467, for the volatility over time of the Alfonsine project.

63 Becker, "Päpstliche Gesetzgebung," 178, citing Stürner, *Die Konstitutionen*, 79–101. For more general comments on the mis-match between legal terminology in the Frederician constitutions and the actual legal landscape of the kingdom, see E.M. Fardella, "Federico II legislatore nel *Regnum*," in *Colendo iustitiam et iura condendo*, ed. Romano, 133–142.

64 G. D'Amelio, *Indagini sulla transazione nella dottrina intermedia con un'appendice sulla scuola di Napoli* (Milan: Giuffrè, 1972), 160–164; comment in Cortese, *Il diritto*, II, 335; and Becker, *Päpstliche Gesetzgebung*, 178.

65 See the edition in two volumes by Antonio Cervone: *Constitutionum regni Siciliarum libri III* and *Capitula Regni Utriusque Siciliae* (Naples: Cervoni, 1773); repr. A. Romano,

legislation promulgated for one kingdom alone might lead one to believe. Once again, this was because of exegesis. The lawyers who learnt the Roman law at the university of Naples understood and applied the local law of the kingdom, so untypically packaged in systematic format for them by Frederick, by reference to Roman and canon law. As *ius commune* lawyers from the major centres of Roman and canon law learning, the few who wrote full-length commentaries on the Sicilian *Constitutiones* naturally embedded the Frederician and supervenient Angevin legislation in the *ius commune*. The *Glossa ordinaria* to the *Constitutiones* by Marinus de Caramanico locates the Sicilian laws securely in the broader legal culture of Roman and canon law.[66] The same is true of the slightly longer commentary by Andreas de Isernia – Andreas also wrote a lengthy work on the *Libri Feudorum* in which he compared and contrasted the dispositions of that predominantly Lombard text, along with the arguments contained in its Bolognese Roman-law gloss, with the institutions of his native *Regno*.[67] The individual glosses which both Marinus and Andreas incorporated into their own glosses and commentaries by other exegetes such as Bartholomeo da Capua, Benedetto da Isernia and Guido da Suzzara – all names to conjure with on the *ius commune* circuit of universities such as Padua and Bologna in the later thirteenth century – were similarly located securely within the cosmopolitan traditions of Roman and canon law. As scholars such as Manlio Bellomo[68] have repeatedly emphasised, local law of this kind was *ius proprium* to the *ius commune* of Roman-canon law and its supporting literature of gloss, commentary and disputation. The same professional elite could and did teach at Bologna or Naples. This meant that when Frederick II

Monumenta Iuridica Siciliensia III.1 and III.2 (Messina: Rubbettino, 1999); and Romano's introduction (MIS III.1, XIII–XLIII). See also Cortese, *Il diritto*, II, 337.

66 The apparatus by Marinus and Andreas are both printed in the edition cited in the preceding note. For the proemium to Marinus' gloss, see the edition in F. Calasso, *I glossatori e la teoria della sovranità*, 3rd ed. (Milan: Giuffrè, 1957), 179–205.

67 Andreas de Isernia, *Lectura super usibus feudorum* (Naples: Sixtus Riessinger [for Francesco del Tuppo], 1476). For other editions, see Giordanengo, "Les Feudistes," 120.

68 From a vast output, we select for accessibility's sake M. Bellomo, *The Common Legal Past of Europe, 1000–1800*, trans. L.G. Cochrane (Washington, DC: Catholic University of America Press, 1995), 55–125; and, as a robust statement of a complex case, "Parlando di 'ius commune'", *Rivista Internazionale di Diritto Comune* 5 (1994), 187–195, repr. M. Bellomo, *Medioevo edito e inedito II. Scienza del diritto e società medievale*, I libri di Erice 20 (Rome: Il Cigno, 1997), 125–132. A more detailed statement with an orientation in the prodigious bibliography in M. Bellomo, "I giuristi, la giustizia e il sistema del diritto commune," in *Legge, giudici, giuristi* (Milan: Giuffrè, 1982), 149–161, repr. Bellomo, *Medioevo edito e inedito II*, 111–122.

demarcated royal from baronial jurisdiction, or Charles I of Anjou stipulated that no lands pertaining to the royal demesne could legally be occupied by others, the expansive comments by teachers and glossators would quickly lead out of the *Regno* and into general Roman law principles relating to *merum imperium*, the delegable and non-delegable categories of *iurisdictio et modica cohercitio* and so on, and the rich seam of dispositions in canon law prohibiting the alienation of ecclesiastical wealth. The standard eighteenth-century printed edition of the *Constitutiones* and *Capitularia regni utriusque Siciliae* reproduce these glosses at the same time as building on them.[69] Thus was continuity created over five centuries of legal practice.

It will be clear by now, even from this necessarily selective presentation, that the expression "codification" has little descriptive value for the phenomena under discussion, beyond its familiarity and except as a starting-point for debate no specialist would disagree with what has long become a truism of scholarship. It should also be clear that the most powerful carrier of legal culture in Western Europe during this period was the professional lawyer, not the new collections of law themselves.[70] After all, countries with uncontestably vigorous and dynamic legal cultures such as England and France did not issue authoritative collections of law in this period. Perhaps the most productive observation on which to conclude concerns the capacity of Western European governments to legislate at all. This was the point at which practice and political convictions turned away from the world described by Fritz Kern in his words quoted at the beginning of this contribution.[71] The interaction of legislatively active government and a robust legal profession as both stimulant to and control over governmental action might well be the truly important nexus in explaining both consistency and growth of later medieval institutions.

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69 See above, n. 65.

70 M. Bellomo, "Una nuova figura di intellettuale: il giurista," in *Il secolo XI: una svolta?*, *Annali dell'Istituto Storico Italo-germanico* 35, ed. C. Violante and J. Fried (Bologna: Il Mulino, 1993), 237–256; repr. Bellomo, *Medioevo edito e inedito II*, 5–21, offers some relevant comments in relation to the early period in the growth of the *ius commune*.

71 We have ventured to doubt that such a world ever existed; above, p. 77.

CHAPTER 6

Codifying the Law

The Case of the Medieval Islamic West

*Maribel Fierro**

1 The Case for Codification of Islamic Law

Codification of Islamic law is associated with the Ottoman Empire, especially with the promulgation of the *Mecelle-i Ahkam-i Adliye* in the year 1877, a civil code covering mainly economic and procedural matters that was elaborated by a law commission headed by Ahmet Cevdet Pasha. The *Mecelle*, based on the doctrines of one of the four Sunni legal schools – the Hanafi legal school or *madhhab* – incorporated legal opinions from other schools on the basis of preference, i.e., taking what was considered best from each school of law (*takhayyur*). The *Mecelle* – which followed the French Napoleonic model – weakened the powers of the juristic class and is considered to have paved the way for broader codification.[1] The *Mecelle* cannot, however, be considered a "fully codified law, because it does not establish basic principles and develop individual rules from these. Instead it enumerates a long list of separate rules without any internal connection between them. Thus the *Mecelle* may in many ways be seen as a continuation of the classical *mukhtaṣarāt* [legal compendia][2] genre in new packaging, but now with the state behind it."[3]

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1 Haider Ala Hamoudi, "The Death of Islamic Law," *Georgia Journal of International and Comparative Law* (forthcoming; University of Pittsburgh Legal Studies Research Paper no. 2010-02. Available at SSRN: http://ssrn.com/abstract=1536108).

2 On this genre see Mohamed Fadel, "The Social Logic of *taqlīd* and the Rise of the *Mukhtaṣar*," *Islamic Law and Society* 3 (1996), 193–233; Jonathan E. Brockopp, *Early Maliki Law: Ibn ʿAbd al-Hakam and his Major Compendium of Jurisprudence* (Leiden: Brill, 2000).

3 Knut S. Vikor, *Between God and the Sultan. A History of Islamic Law* (London: Hurst and Company, 2005), 230–231.

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In earlier centuries, the ruler's legislative powers had played a crucial role in the Ottoman legal system, which was also more bureaucratically organised than in other Islamic Sunni societies, a peculiarity that some have associated with Roman-Byzantine heritage. The statutes and regulations issued by the Ottoman sultans were codified in *kanunname*s (books of laws) dealing mostly with fiscal law, land law, organisation of the state and penal matters. Although some scholars have considered that state law (*kanun*) abrogated religious law (*sharīʿa*), most tend to consider that they were not directly antagonistic, as there was not much difference in the content of the rules; the main difference was "that *kanun* [was] based on the sultan's authority, and nothing else, and that it [was] a unitary and systematic system of law, more akin to a law code than the *sharīʿa* which is based on a diverse and contradictory legal literature and the *muftī*'s interpretation and adaptation of this."[4] In any case, these Ottoman state legal codes had limited impact on areas such as marriage and inheritance where Islamic religious law – the *sharīʿa* – reigned supreme.

Codification in Islamic lands tends to be associated with external influences, as something inimical to the "essence" of Islamic law,[5] inimical to officially promulgated collections of law. Joseph Schacht – following Weber – described Islamic law as an example of jurists' law: "It was created and developed by private specialists; legal science, and not the state, plays the part of a legislator, and scholarly handbooks have the force of law."[6] No specific monograph has been devoted to the analysis of the "state's" intervention in the development of Islamic law, although rulers – directly or indirectly – played an important role not only in deciding its application,[7] but also in imposing a

4 Vikor, *Between God and the Sultan*, 207–209. See also Richard Repp, "Qānūn and Sharīʿa in the Ottoman Context," in *Islamic Law. Social and Historical Contexts*, ed. Aziz al-Azmeh (London: Routledge, 1988), 124–145; Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994); Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), especially 69–75; and the entries *Kanun* and *Kanuname* by H. Inalcik, in *Encyclopaedia of Islam*, 2nd ed. (Leiden: Brill Online, 2012; viewed 20 June 2012).

5 See the discussion of this point in Hamoudi, "The Death of Islamic Law," with references to previous works at n. 24.

6 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 5.

7 Examples from al-Andalus in Alfonso Carmona, "Las diferencias entre la jurisprudencia andalusí y el resto de la escuela de Mālik: el texto atribuido a Abū Ishāq al-Garnātī," *Al-Qantara* XIX (1998), 67–102, especially 86 (intervention of al-Hakam II) and 92 (ʿAbd al-Rahmān III). For developments in a different way see Felicitas Opwis, "Shifting Legal Authority from the Ruler to the *ʿulamāʾ*: Rationalizing the Punishment for Drinking Wine During the Saljūq Period," *Der Islam* 86 (2011), 65–92.

specific *madhhab* in a specific territory – as the Umayyads of al-Andalus did with regard to the Maliki legal school[8] – as well as in many other ways.[9]

Codification in the Roman Latin tradition has as its main model Justinian's code, an example of an imperial codification that had involved the selection and edition of previous legal opinions, and that could be imposed over an extended territory because that territory was under the emperors' control and because the emperor was accepted as an undisputed authority.[10]

In Western Christendom, the Justinian code – as the *Corpus iuris civilis* – served the function of providing a stable text in which no contradictions were to be found and which was not subject to modification; it was fixed by an undisputed authority. As such it was used by Frederick I Barbarossa (1122–10 June 1190)[11] to present himself as a new Roman emperor, as *mundi dominus*, *lex animata in terris*, and as a counterweight to the claims of the Church to have authority because of divine revelation.[12]

Codification can also have a more general meaning, that of the creation of codes in the sense of compilations of written rules and regulations collected

8 Maribel Fierro, "Proto-Mālikīs, Mālikīs and Reformed Mālikīs," in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. P. Bearman, R. Peters and F.E. Vogel (Cambridge, MA: Harvard University Press, 2005), 57–76. For another case, see Rudolph Peters, "What Does It Mean to be an Official *Madhhab*? Hanafism and the Ottoman Empire," in *The Islamic School of Law*, 147–158. On a failed attempt to impose a single *madhhab* see Michael Winter, "Inter-*madhhab* Competition in Mamluk Damascus: al-Tarsūsī's Counsel for the Turkish Sultans," *David Ayalon Memorial Volume*, *Jerusalem Studies in Arabic and Islam* 25 (2001), 195–211.

9 On the relationship between jurists and the state in Umayyad and 'Abbāsid times see Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986); and Muhammad Qasim Zaman, *Religion and Politics under the early Abbasids: the Emergence of a proto-Sunni Elite* (Leiden: Brill, 1997). For a later period see Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996). More generally, Wael Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001).

10 On Justinian's codification see Bernard Stolte's paper in this volume, above, 59–74.

11 Franco Cardini, *Castel del Monte* (Bologna: Il Mulino, 2000), 64 and idem, *Il Barbarossa. Vita, trionfi e illusioni di Federico I imperatore* (Milan: Mondadori, 1985). The presence of Justinian's code under the Normans in Sicily is discussed in Federico Martino and Adalgisa da Simone, "Un documento in arabo e il diritto comune alla corte di Ruggero II," *Rivista Internazionale di Diritto Comune* 19 (2008), 93–136. I owe this reference to Giuseppe Mandalá.

12 On the complex issue of papal legislation, and the Church's role in codification in connection with the universities see Emanuele Conte and Magnus Ryan's paper in this volume, above, 75–97.

and arranged in a systematic way, usually by subject. Codifications in this general sense did exist in the Muslim world, starting from the "canonical" compilations of *ḥadīth* (traditions of the Prophet)[13] that constitute the second source of the divine law after the Qurʾān. Such compilations included much contradictory material and were not user-friendly for those learning the specifics of the law. Using different interpretative methodologies, jurists (*fuqahāʾ*) produced a number of manuals or text-books, some of which enjoyed almost exclusive authority at least for certain periods or regions, such as Ibn al-Jallāb's (d. 378/988) *Kitab al-tafrīʿ*, Ibn Abī Zayd's (d. 386/996) *al-Risāla* or Ibn ʿĀṣim's (d. 829/1426) *Tuḥfat al-ḥukkām* in the Islamic West.[14]

These legal compilations co-existed with others which in principle enjoyed the same authority, did not supersede earlier similar compilations – some of which had been used as sources of later ones – and were not conceived as lasting forever and to be imposed on the population. The key point of difference between such compilations and Justinian's code is, therefore, not in the sources of the codification – Justinian's code was also based on earlier materials – but in the acceptance that the issuer of the codification is an undisputed authority endowed with the right of imposing a single legal body over the population of a certain territory. It is using codification in this specific sense close to Justinian's precedent that I will explore below two attempts at codifying the law in the Islamic West.

2 Codification in the Islamic East

First, however, it is necessary to consider attempts at codification in the Islamic East. Recently, Benjamin Jokisch has argued that Islamic law originated as imperial law during the reign of the ʿAbbāsid caliph Hārūn al-Rashīd (r. 170/786-193/809) under the influence of Justinian's code, replicated by al-Shaybānī (d. 189/805) in his legal works.[15] His argument has been criticised by historians of both Byzantine and Islamic law.[16] Jokisch's argument is partly founded on

13 Jonathan Brown, *The Canonization of al-Bukhārī and Muslim. The Formation and Function of the Sunni Hadīth Canon* (Leiden: Brill, 2011).

14 Mohamed Fadel is the scholar who has made a more compelling case for considering the writing of Khalīl b. Isḥāq's (d. 776/1374) *Mukhtaṣar* as a "quasi-code" for the Maliki legal school: see his article quoted above in n. 2.

15 Benjamin Jokisch, *Islamic Imperial Law: Harun-al-Rashid's Codification Project* (Berlin: Walter de Gruyter, 2007).

16 On the "Islamic" side see Rudolph Peters' review in *Journal of the American Oriental Society* 129 (2009), 529–530; and Matthieu Tillier's more nuanced criticisms in *Revue des*

the fact that the possibility of preparing an "imperial" codification had earlier been proposed by Ibn al-Muqaffaʿ (d. 139/756), who in his *Risālat al-ṣaḥāba* suggested to the ʿAbbāsid caliph al-Manṣūr (r. 136/754-158/775) that he could strengthen his legitimacy and his government by preparing a codification of laws and legal decrees and by uniting under his authority the different opinions of the jurists:

> if the Commander of the Believers should see fit to decree that these cases and different norms (*sịyar*) be brought before him in a book together with the explanation and argument of every scholar on the basis of the *sunna* or *qịyās*, the Commander of the Believers could examine them and give his decision in each case according to the inspiration (*ilhām*).[17]

Ibn al-Muqaffaʿ – who was of Iranian origins and came from a Zoroastrian background[18] – also suggested to the caliph the drawing up of a concise "catechism" or regulation, free of the extremist doctrines circulating in the ʿAbbāsid army, for the military leaders to memorise. He also insisted on the need for the caliph to recruit men who would serve him well, independently of their genealogy. Ibn al-Muqaffaʿ, like others, believed that the *imām* or caliph (the religious and political leader of the believers) had a divine inspiration that made him the ultimate arbiter of right and wrong: the community had to have recourse to the *imām* whenever disagreements arose about religion, for God would make him think of the right solution and inspire him with knowledge of it.

Mondes Musulmans et de la Méditerranée 125 (2009), 308–313. On the "Byzantine" side see Wolfram Brandes in *Byzantinische Zeitschrift* 103 (2010), 216–230.

17 Ibn al-Muqaffaʿ, "Risāla fī l-sahāba," in *Rasāʾil al-bulaghāʾ*, ed. M. Kurd ʿAlī (Cairo, 1946), 136–137. I quote the translation by M.M. al-Aʿzamī, *On Schacht's Origins of Muhammadan Jurisprudence* (Riad, 1989), 42. See also Paul L. Heck, "Law in ʿAbbasid Political Thought from Ibn al-Muqaffaʿ (d. 139/756) to Qudāma b. Jaʿfar (d. 337/948)," in *ʿAbbasid Studies. Occasional papers of the School of ʿAbbasid Studies, Cambridge, 6–10 July 2002*, ed. James F. Montgomery (Leuven: Peeters, 2004), 83–109.

18 On Ibn al-Muqaffaʿs life and thought see Charles Pellat, *Ibn al-Muqaffaʿ mort vers 140/757, "conseilleur" du Calife* (Paris: Maisonneuve et Larose, 1976); Mohamed Mahassine, "Deux genres d'autorités vues à travers les œuvres d'Ibn al-Muqaffaʿ: l'autorité fondée sur la religion et l'autorité fondée sur la fermeté," *Acta Orientalia Hungarica* (Budapest) 14/1 (1991), 89–120; I.T. Kristó-Nagy, "Reason, Religion and Power in Ibn al-Muqaffaʿ," *Acta Orientalia Academiae Scientiarum Hungaricae* 62.3 (2009), 285–301.

However, the ʿAbbāsids – as caliphs who claimed the inheritance of the Prophet's house – do not seem also to have claimed the special religious knowledge of the Shiʿi *imām*s, and it has been argued that as far as law is concerned, they appear to have recognised the religious scholars' monopoly from the start.[19] An attempt at religious uniformity was made in the field of theology, with the famous episode of the "inquisition" (*miḥna*) in order to impose the belief in the uncreated character of the Qurʾān. However, this was not an attempt at permanent, institutional control of people's beliefs, but a move to make it clear that the ultimate authority in matters of faith was the caliph.[20]

3 Codification in the Islamic West

Two similar attempts can be located in the Islamic West, i.e., rulers who claimed for themselves an absolute and infallible authority, something that happened under a Shiʿi (Ismāʿīlī) dynasty – that of the Fāṭimids (fourth/tenth century) – and later under the Almohads (sixth/twelfth century), whose caliphate I have described as closer to Shiʿism than to Sunnism at least in its earlier stages.[21]

3.1 *The Fāṭimid Code*

The doctrine relating to the Sunni caliphate held that the caliph, the political and religious leader of the Muslim community, was the vicar of the Prophet of God. Although the caliph was considered the central figure in seeing that the community followed the correct path to salvation, his role was basically limited to ensuring compliance with the message brought by the Prophet Muḥammad. This message had been set down in the Qurʾān and in the Tradition of the Prophet – that is, in the narration of the deeds and words of Muḥammad – texts the interpretation of which was entrusted to specialists in religious knowledge, the *ʿulamāʾ*, principally those concerned with law. Thus the legacy of the Prophet was divided between the caliph and the scholars,

19 Patricia Crone, *Medieval Islamic Political Thought* (Edinburgh: Edinburgh University Press, 2004), 94, 130.

20 Crone, *Medieval Islamic Political Thought*, 131.

21 Maribel Fierro, "The Almohads and the Fatimids," in *Ismaili and Fatimid Studies in Honor of Paul E. Walker*, ed. Bruce D. Craig (Chicago: Middle East Documentation Center, 2010), 161–175; reprinted in M. Fierro, *The Almohad Revolution. Politics and Religion in the Islamic West during the Twelfth-Thirteenth Centuries* (Farnham: Ashgate Variorum, 2012), IV.

with the latter especially responsible for the interpretation and implementation of his legacy.[22]

As for the Shiʿis, they saw the caliph not as the vicar of the Prophet but of God himself.[23] They attributed to him qualities that the Sunnis tended to restrict to prophets, such as supernatural knowledge, "impeccability," or the ability to perform miracles. For the Shiʿis this was possible since only a direct descendant of the Prophet Muḥammad could be a caliph. Genealogy assured the transmission of a special closeness to God or sainthood; the caliph was also *walī Allāh*, "the friend of God."

One branch of the Shiʿis – the Ismaʿilis – managed to establish a caliphate in North Africa (Tunisia) in the year 297/909, after one of their missionaries (*dāʿīs*) created an army of Kutāma Berbers won over to the Ismaʿili cause. The Ismaʿilis were Bāṭinis (esotericists) and as such open to the accusation of having dispensed with positive law or the commandments and prohibitions of the *sharīʿa* because they had found access to its hidden, true meaning concealed in the *bāṭin* or esoteric dimension of religion.[24] In the pre-Fāṭimid secret and revolutionary phase of the Ismaʿili movement, dissimulating Ismaʿilis observed the law of the land wherever they lived.[25] After the establishment of the Fāṭimid caliphate, and after a period in which the Messianic expectations that would have resulted in the abrogation of the *sharīʿa* were toned down to accommodate the needs of ruling a *dawla*,

22 Crone, *Medieval Islamic Political Thought*, 125–141 and 219–255.

23 Crone, *Medieval Islamic Political Thought*, 70–124, 197–218. See also for the specific case of the Ismaʿilis and the Fāṭimids *Degrees of Excellence. A Fatimid Treatise on Leadership in Islam*, A New Arabic Edition and English Translation of Ahmad b. Ibrahim al-Naysaburi's *Kitāb Ithbāt al-Imāma*, ed. and trans. Arzina R. Lalani (London: I.B. Tauris in association with The Institute of Ismaili Studies, 2010); and Paul Walker, *Master of the Age. An Islamic Treatise on the Necessity of the Imamate* (London: I.B. Tauris in association with The Institute of Ismaili Studies, 2007).

24 On these accusations see Heinz Halm, *The Empire of the Mahdi: The Rise of the Fatimids*, trans. M. Bonner (Leiden: Brill, 1996), 247–264. See also Habib Feki, *Les idées religieuses et philosophiques de l'ismaélisme fatimide*, Faculté des Lettres et Sciences Humaines de Tunis, 6 série, 13 (Tunis: Université de Tunis, 1978). On the different Ismaʿili views on the need for a revealed law and its limits, see Daniel de Smet, "Loi rationnelle et loi imposée. Les deux aspects de la *šarīʿa* dans le chiisme ismaélien des Xe et XIe siècles," *Mélanges de l'Université Saint-Joseph* 61 (2008), 515–544.

25 Farhad Daftary, "Al-Qādī al-Nuʾmān, Ismāʿīlī Law and Imāmī Shīʿism," in *Le shiʿisme imamite quarante ans après: hommage à Etan Kohlberg*, ed. Mohammad Ali Amir-Moezzi, Meir M. Bar-Asher and Simon Hopkins (Turnhout: Brepols, 2009), 179–186, at 179.

a moderate position emerged that recognised the need for a religious legislation.[26]

The third Fāṭimid caliph al-Manṣūr (r. 334/946-341/953) issued a (now lost) compilation of religious law "which was probably the first official Fatimid legal code … al-Manṣūr seems to have set forth his rulings without referring to the pronouncements of former imams or justifying them by legal reasoning, relying solely on his own authority as the infallible imam."[27] Al-Manṣūr's legal code was soon superseded by a work composed by the famous Ismaʿili judge Qāḍī Abū Ḥanīfa al-Nuʿmān b. Muḥammad, known as Qāḍī al-Nuʿmān (d. 363/974),[28] whose legal writings aimed at the creation of a state *madhhab* issued from above, but which at the same time was simplified, moderate, and accessible to the masses, and which resembled Sunni legal doctrine: "Al-Nuʿmān's merit … consists in the construction of a juridical and legal system for the use of the state, one oriented in the direction of a reconciliation of the concepts of Ismāʿīlism with those of the orthodoxy of Qayrawān."[29] This has been called a rapprochement between Ismaʿili doctrine and the theses of Sunnism. Crucial differences between Ismaʿilism and Sunnism persisted, however, such as in the definition of faith, the role of the *imām*, and also in the fact that al-Nuʿmān wrote (or so it was claimed) his legal works in close collaboration with the fourth Fāṭimid caliph al-Muʿizz (r. 341/953-365/975), as the Ismaʿili *imām* was the repository of all learning: he was said to have inherited the charismatic powers of the Prophet, and therefore could perform miracles, was infallible and possessed supernatural knowledge.[30]

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26 Sumaiya A. Hamdani, *Between Revolution and State: The Path to Fatimid Statehood* (London: I.B. Tauris, 2006). See also Paul Walker, *Hamīd al-dīn al-Kirmānī. Ismaili Thought in the Age of al-Hākim* (London, New York: I.B. Tauris and Institute of Ismaili Studies, 1999). Al-Kirmānī (4th/10th–5th/11th century) stated the need for a legal corpus (*qānūn*) defined as "the books (*kutub*), the laws (*sharāʾiʿ*), the prescriptions (*rusūm*) and the impositions (*wadāʾiʿ*)": de Smet, "Loi rationnelle et loi imposée," 531 and 541.

27 Wilferd Madelung, "A Treatise on the Imamate of the Fatimid Caliph al-Mansūr bi-Allāh," in *Texts, Documents and Artefacts. Islamic Studies in Honour of D.S. Richards*, ed. Chase Robinson (Leiden, Boston: Brill, 2003), 69–77, at 70–71.

28 On him, see A.A.A. Fyzee, "Qādī an-Nuʿmān, the Fatimid Jurist and Author," *Journal of the Royal Asiatic Society* (1934), 1–32; W. Ivanow, *Ismaili Literature. A bibliographical survey* (Teheran: University Press, 1963), 32–37; I.K. Poonawala, *Bibliography of Ismāʿīlī Literature* (Malibu, CA: Undena Publications, 1977), 48–68; EI², *s.v.* al-Nuʿmān (F. Dachroui); Hamdani, *Between Revolution and State*.

29 Dachroui in EI², *s.v.* al-Nuʿmān.

30 Halm, *The Empire of the Mahdi*, 356–364. These claims were echoed in Cordoban Umayyad polemical writings against the Fāṭimids. In one of his letters to the North African Berbers whose alliance he sought, the Cordoban Umayyad caliph ʿAbd al-Rahmān III enumerates

In fact, in 349/960 al-Muʿizz ordered Qāḍī al-Nuʿmān to produce a new code according to the following sequence of events:

> Once at the court of al-Muʿizz, al-Nuʿmān was present at a large gathering consisting of a number of *dāʿīs*, when the conversation turned upon the differences regarding reported traditions, and how on account of this a number of erroneous opinions had come into being as innovations. Al-imam al-Muʿizz spoke to them about correct opinions and legal propositions, and how this community would necessarily follow the previous generations closely … Then al-Muʿizz reported the well-known *ḥadīth* of the Prophet: "When innovations appear in my community, let the learned man make manifest his learning; else the curse of God be upon him," and turning to the Qāḍī, he said: "You, O Nuʿmān, are the one indicated by this saying in these times." He then commanded al-Nuʿmān to compose the *Daʿāʾim al-islām* and explained to him the "roots" (*uṣūl*) and the "branches" (*furūʿ*) of the law, and related to him authentic traditions from his forefathers, the Imams of the House of the Prophet, and the traditions of the Prophet himself, and distinguished those concerning which the reporters differed. Qāḍī l-Nuʿmān composed the book as planned by Imām Muʿizz and used to get it revised chapter by chapter and paragraph by paragraph by al-Muʿizz, who rejected what was unsound and corrected and retained what was right. Thus there came into existence a book, short yet authoritative, which is a miracle of al-Muʿizz through the instrumentality of his *dāʿī* and "friend" (*walī*) Qāḍī al-Nuʿmān.[31]

Qāḍī al-Nuʿmān had been named judge of Tripoli by the third Fāṭimid caliph al-Manṣūr soon after his accession. In 337/948, when al-Manṣūr relocated the Fāṭimid capital to Manṣūriyya, he was promoted to the highest judicial post of the Fāṭimid state, with jurisdiction over Manṣūriyya, the old capital Mahdiyya and Qayrawān. Al-Manṣūr may also have entrusted al-Nuʿmān with the affairs of the missionary activities (*daʿwa*) as chief *dāʿī*. In 343/954, al-Muʿizz entrusted him with the *maẓālim* (grievances). In addition to enjoying the highest judicial

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all the vices and wrongdoings of the Fāṭimid caliph, among which he points to the fact that the Ismaʿili *imām* does not follow any religion, sometimes claiming to be God and sometimes claiming to be a Prophet: Ibn Hayyān, *Muqtabis*, v, ed. Pedro Chalmeta, Federico Corriente and Mahmud Sobh (Madrid; Instituto Hispano-Árabe de Cultura; Rabat: Facultad de Letras, 1979); Spanish translation by Federico Corriente and María Jesús Viguera (Zaragoza: Anubar, 1981), 221/247.

31 Bayard Dodge, "The Fatimid Legal Code," *Muslim World* 1 (1960), 30–38, quoting Idrīs, *ʿUyūn*, VI, 42–43.

authority in the Fāṭimid state, al-Nuʿmān was also authorised to hold the *majālis al-ḥikma* (sessions of wisdom),[32] held every Friday in order to instruct the Ismaʿilis in esoteric doctrines. The lectures he then gave have survived in his work *Taʾwīl al-Daʿāʾim*.[33] He had started the elaborate process of codifying Ismaʿili law by systematically collecting a vast number of legal *ḥadīth* transmitted from the *ahl al-bayt* on the basis of a variety of earlier Shiʿi sources. The results of his initial endeavours appeared in a massive compendium entitled *Kitāb al-īḍāḥ*, of which only a fragment has survived. Subsequently, he produced several abridgements of this work and all were treated as semi-official compendia by the Fāṭimids.[34] One such abridgement was the *Daʿāʾim al-islām*.[35] Its contents are very similar to those of Sunni *fiqh* manuals, including matters both of the relations between man and God (*ʿibādāt*, ritual) and of the relations among men (*muʿāmalāt*, relations *inter vivos et mortis causa*). Similarities are especially striking as regards Ismaʿili and Maliki laws of marriage and sales, which reflects the fact that Malikism was the predominant local legal school. A difference in positive law is that Ismaʿili law firmly rejects the principle of superiority which Sunni law grants to male agnates as legal heirs, this having to do with Shiʿi claims to legitimate authority through the inheritance of Fāṭima, the Prophet's daughter.[36]

There were also other important differences. The first is that the Fāṭimids did not accept the traditions of the Prophet's Companions, regarding as authoritative only things that were said and done either by Muḥammad himself or by members of his family. They transmitted these without chains of transmission (*isnād*s), because when an *imām* related a tradition from the Prophet no further authority was necessary.[37]

The second difference is the central place occupied by the imamate (*imāma*). There could be no religion for anyone who did not believe in the

32 Heinz Halm, "The Ismaʿili Oath of Allegiance (*ʿahd*) and the 'Sessions of Wisdom' (*majālis al-hikma*) in Fatimid Times," in *Mediaeval Ismaʿili History and Thought*, ed. Farhad Daftary (Cambridge: Cambridge University Press, 1996), 91–115.

33 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 182.

34 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 183.

35 al–Nuʿmān, *Daʿāʾim al-islām*, ed. A.A.A. Fyzee (Cairo, 1951–1961); repr. 2 vols (Beirut: Dār al-Adwāʾ, 1411/1991). The text has been translated by A.A.A. Fyzee and revised by I.K.H. Poonawala, *The Pillars of Islam* 2 vols (New Delhi: Oxford University Press, 2002).

36 Amin Hajji, "Institutions of Justice in Fatimid Egypt," in *Islamic Law. Social and Historical Contexts*, ed. al-Azmeh, 198–214, 199. Cf. Fyzee, "Aspects of Fatimid Law," 90–91; and Agostino Cilardo, *Diritto ereditario islamico delle scuole giuridiche ismailita e imamita: casistica* (Rome: Istituto per l'Oriente C.A. Nallino, 1993).

37 On the sources of Ismaʿili law see Wilferd Madelung, "The Sources of Ismāʿīlī Law," *Journal of Near Eastern Studies* 3 (1976), 29–40. Al-Nuʿmān, however, did no quote any traditions

imamate of the chosen *imām*s of the family of the Prophet. God does not accept the actions of a Muslim unless he acknowledges and trusts the authority of the *imām*s and obeys them, according to Qurʾān 4:59: "Obey Allāh, and obey the Messenger, and obey those in charge of authority (*amr*) among you."[38] Those charged with authority are the *imām*s. Faith is not only testifying that there is no god but God and that Muḥammad is the Messenger of God, but also knowing the *imām* of one's generation, and submitting to his rule. As the sixth *imām* stated: "We have from our God a rank which is not bestowed on anybody other than ourselves, and which is not the right of anyone else. For we are the light from the light of God." Submission to the *imām*s must be accompanied by affection (*mawadda*) for them. The Prophet said:

> The importance of the members of my family for you is like that of Noah's Ark. Whoever embarked on it was saved, but he who was separated from it drowned. Seek knowledge from the well-versed members of my family, for whoever obtains knowledge from the highly informed members of my family is rescued from hell.

The doctrine of the imamate served to characterise the legal system of the Ismaʿilis (also known as Sevener Shiʿis).[39] In contrast to the Ismaʿilis, *walāya* (devotion, allegiance to the *imām*) was not included in Twelver Shiʿi or Imami legal works. For the Twelvers, the doctrine of the imamate had no practical value as their Twelfth *imām*-Mahdī had gone into occultation. In the absence of their *imām*, Twelver Shiʿi scholars emerged as legal authorities (*fuqahāʾ*) in the community, and some of them opted for the creation of a legal school (*madhhab*) as the Sunnis had done.[40]

Among the Fatimids we do not find the kind of scholar or jurist that emerged among the Twelvers and brought them closer to the Sunnis. The Sunni caliph was responsible for ensuring that the community he ruled followed the norms and regulations of the religious law (*sharīʿa*) based on revelation (Qurʾān and the Prophetic *sunna*). But God's revelation needed to be interpreted in search

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from the contemporary Ismaʿili *imām*s – the Fāṭimid caliphs – who monitored his writings (Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 184), thus differing from al-Manṣūr's previous attempt at codificiation (see above, n. 28).

38 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 185.

39 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 180 and 182.

40 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 185–186; Robert Gleave, *Inevitable Doubt: Two Theories of Shiʿi Jurisprudence* (Leiden: Brill, 2000); Devin Stewart, *Islamic Legal Orthodoxy. Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City: University of Utah Press, 1998).

of its legal contents and meanings, and its interpretation was not in the hands of the caliph, but of the religious scholars (*'ulamā'*) and more specifically in the hands of the jurists, the *fuqahā'*. The Isma'ili caliph, on the contrary, was an infallible *imām* and as such his knowledge of the law could not be surpassed. In other words, at least theoretically, in Isma'ilism there was no need for jurists or interpreters of the law.

F. Dachraoui has summarised the relationship between the Fāṭimid caliph and Qāḍī al-Nu'mān by saying that al-Mu'izz

> impelled his supreme *kāḍī* to elaborate a juridical system accessible and conformable to the universalist concept of the imāmate. Thus if the Ismā'īlī supreme *kāḍī* offered the same image of simplicity and modesty, with the additional technical and moral qualities inherent in his office, as did the Sunnī *kāḍī 'l-kuḍāt*, he nevertheless lived and worked within a total dependence of power. He ceased to be the mouthpiece of the *'āmma*, the censor of the palace,[41] listened to by the sovereign and feared by the aristocracy.[42]

The case of Fāṭimid codification was thus linked to a specific kind of ruler and also to a specific scholarly milieu, with the scholar dependent on the ruler. The type of religious scholar represented by Qāḍī al-Nu'mān does not lead to the production of biographical dictionaries of *'ulamā'*, the *tarājim* or *ṭabaqāt* works that are absent in the Fāṭimid context but are such an essential feature of Sunni Islam.[43] Biographical dictionaries of specialists in the different branches of religious knowledge are an indispensable element in the religious and intellectual life of Sunni societies. In a Sunni context, the transmission and preservation of religious knowledge are not formally institutionalised or hierarchised, and the state is not responsible for the creation of religious elites or legal experts. Lacking institutional mechanisms, one of the ways in which the *'ulamā'* articulated both their existence as a group and their relationship with state and society was the writing of biographical dictionaries in which the memory of the members of such groups, their knowledge, their teaching networks and their political and social practices were preserved.[44] Biographical

41 An Isma'ili *imām*-caliph cannot be censored, whereas a Sunni caliph can and in fact was: on this see Maribel Fierro, "La política religiosa de 'Abd al-Rahmān III," *Al-Qantara* 25 (2004), 119–156.

42 Dachroui in EI², *s.v.* al-Nu'mān.

43 For the case of the Twelver Shī'īs, see Stewart, *Islamic Legal Orthodoxy.*

44 Michael Chamberlain has shown part of this process in a specific period and area of the Islamic world in his *Knowledge and Social Practice in Medieval Damascus, 1190–1350*

dictionaries of religious scholars were written by the religious scholars themselves, not only for use within their own circles, but also to remind the rulers of their crucial social role.

What about the Ismaʿilis living in Fāṭimid territory? The Fāṭimid *imām* was the source of all religious knowledge and the religious elites were dependent on him in doctrinal, political and economic terms. To my knowledge, no biographical dictionary of Ismaʿili "scholars"[45] of the Fāṭimid caliphate was ever written.[46] What Ismaʿili missionaries wrote were autobiographies, memoirs in which they recorded the services they had rendered to the *imām*'s cause.[47] The focus was therefore not the group and how they related to society, but the individual and his commitment to a charismatic leader and his mission. Also, once an Ismaʿili code was produced, and given that its foundation was the undisputed authority of the *imām* endowed with the right of imposing a single legal body over the population ruled by him, this meant that the persons in charge of interpreting it and putting it into practice could not be informal elites '*ulamā*' style, but a body of state functionaries hierarchically organised, whose training and activities had to be centralised and controlled. However, there is scarce indication that Fāṭimid institutions developed a formal structure over and above personal networks.[48] Also, we know little about the Ismaʿili judicial and the legal

(Cambridge: Cambridge University Press, 1994). See also Fernando Rodríguez Mediano, "El género biográfico árabe: apuntes teóricos," *Estudios Onomástico-Biográficos de al-Andalus. VIII. Biografías y género biográfico en el Occidente islámico*, ed. M.L. Avila and M. Marín (Madrid: CSIC, 1997), 17–34.

45 On them, see Heinz Halm, *The Fatimids and their Traditions of Learning* (London, New York: I.B. Tauris in association with the Institute of Ismaili Studies, 1997); and Paul E. Walker, "Fatimid Institutions of Learning," *Journal of the American Research Center in Egypt* 34 (1997), 179–200.

46 I have found no mention of any in the extant bibliographies of Ismaʿili literature nor in the recent overview by Paul E. Walker, *Exploring an Islamic Empire. Fatimid History and its Sources* (London, New York: I.B. Tauris in association with The Institute of Ismaili Studies, 2002). On this issue see Maribel Fierro, "Why and How do Religious Scholars Write about Themselves? The Case of the Islamic West in the Fourth/Tenth century," *Mélanges de l'Université Saint-Joseph* 58 (2005), 403–423.

47 See on this autobiographical genre *The Advent of the Fatimids. A Contemporary Shiʿi Witness. An Edition and English Translation of Ibn al-Haytham's Kitāb al-Munāzarāt*, ed. and trans. Wilferd Madelung and Paul E. Walker (London, New York: I.B. Tauris, 2000).

48 See Rachel Howes, "Personal and Political Networks and the Fatimid Crisis of the mid-Eleventh Century," in *Historical Dimensions of Islam: Essays in Honor of R. Stephen Humphreys*, ed. James E. Lindsay and Jon Armajani (Princeton: Darwin Press, 2009), 45–63, at 47.

activities under the Fāṭimids,[49] especially taking into account that the majority of the population ruled by the Fāṭimids did not follow Ismaʿili law.[50]

Lack of the Sunni type of scholars among the Ismaʿilis resulted also in the absence of *fatāwā*, legal opinions given by the jurists either to private individuals or to the judge in order to propose solutions for specific legal problems. Such legal opinions rested upon the practice of *ijtihād*, the effort made to interpret the law, a practice that implied that every interpreter of the law who performed this task according to correct rules and methodologies was right (*kull mujtahid muṣīb*),[51] and that as a result divergent and equally valid *fatāwā* and rulings circulated on the same issues. Such conceptions and practices were alien to Ismaʿilism and its *imām*-caliph. There were no *fatāwā*, but there were the *imām*-caliph's decrees.[52]

We have seen above that the rationale for the codification entrusted by al-Muʿizz to Qāḍī al-Nuʿmān were "the differences regarding reported traditions, and how on account of this a number of erroneous opinions had come into being as innovations." Qāḍī al-Nuʿmān compiled a polemical treatise entitled *Kitāb ikhtilāf uṣūl al-madhāhib*, refuting the Sunni schools of jurisprudence on the basis that they contained a variety of opinions often contradictory and that this was a cause of confusion and uncertainty. Such variety of opinions originated from the use of reasoning. The Fāṭimids claimed that reasoning by individual insight and analogy could not explain the law, which could only be interpreted by means of the knowledge given by God to the Prophet and passed on to the members of his family. Because of this, as the first chapter of

49 Hajji, "Institutions of Justice in Fatimid Egypt"; Paul Walker, "Another Family of Fātimid Chief Qādīs: The al-Fariqīs," *Journal of Druze Studies* 1 (2000), 63–65; and idem, "The Relationship between Chief *Qādī* and Chief *Dāʿī* under the Fatimids," in *Speaking for Islam. Religious Authorities in Muslim Societies*, ed. Gudrun Kramer and Sabine Schmidtke (Leiden: Brill, 2006), 70–94.

50 Wilferd Madelung, "The Religious Policy of the Fatimids toward their Sunni Subjects in the Maghrib," *L'Egypte Fatimide. Son art et son histoire. Actes du Colloque organisé à Paris les 28, 29 et 30 mai 1998*, sous la direction de Marianne Barrucand (Paris: Presses de l'Université de Sorbonne, 1999), 97–104; Yaacov Lev, *State and Society in Fatimid Egypt* (Leiden: Brill, 1991), 133–152.

51 See on this legal principle Eric Chaumont, "Tout chercheur qualifié dit-il juste? (*Hal kull muǧtahid musīb*): La question controversée du fondement de la légitimité de la controverse en Islam," in *La controverse religieuse et ses formes*, ed. A. Le Boulluec (Paris: Éditions du Cerf, 1995), 11–27.

52 For examples that have reached us see Samuel Miklos Stern, *Fatimid Decrees: Original Documents from the Fatimid Chancery* (London: Faber and Faber, 1964). Professor Paul Walker is preparing a study on surviving Fāṭimid decrees.

the *Daʿāʾim* states, "God, Exalted and Glorious, demands obedience to the *imām*s, learning from them, and submission both to their rule and to what is demanded on their behalf." The Fāṭimid *imām*-caliph al-Muʿizz had read the *Daʿāʾim* carefully, chapter by chapter, and it was endorsed by him as the official code of the Fāṭimid dominions. It is still in use among contemporary Ismaʿili communities, not having been superseded by any later one. It has served the Tayyibi Ismāʿīlīs, designated as Bohoras in South Asia, as their principal legal authority, precisely because in all his work Qāḍī al-Nuʿmān consulted his contemporary Fāṭimid caliph, and therefore it had the authority of the living *imām*.[53] Against this background, it is striking that F. Daftary shows surprise at the fact that the

> legal literature of the Fatimid Ismāʿīlīs … remained rather meagre by comparison with the Sunni schools of jurisprudence and the Twelver *madhhab*. After al-Nuʿmān there was no significant development in Ismāʿīlī law.[54] The Ismāʿīlī system of jurisprudence is almost exclusively the work of al-Qāḍī al-Nuʿmān, whose works have been preserved by the Ṭayyibī Ismāʿīlīs of Yemen and South Asia. For these Ismāʿīlīs, the *Daʿāʾim al-Islām* still serves, after a millennium, as their foremost authority in legal matters while their Imams have remained hidden. On the other hand, the Nizārī Ismāʿīlīs, who have always had a present Imam, have been guided in their legalistic affairs by current Imams.[55]

Summarising, then, we have here a legal code inspired by a divinely appointed *imām* even if written down by one of his servants, the aim of which was to put an end to differences of opinion and, because it was divinely inspired, it was meant to last – which it did.

3.2 *An Almohad Codification?*

Both in the case of Ibn al-Muqaffaʿ and in that of the Fāṭimids, the promotion of a legal codification implied the notion of caliphal authority over religious doctrine – both legal and theological – a notion that threatened the role of the Sunni-type *ʿulamāʾ*. In the case of the Almohads, theirs was a caliphate of a peculiar sort as it offered a curious mixture of Shiʿism and Sunnism, what I have elsewhere described as "Sunniticised Shiʿism." Again, however, their

53 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 182–184.

54 For some later legal works (from the 16th century AD, which seem to have consisted in glosses and questions) see Fyzee, "Aspects of Fatimid Law," 82.

55 Daftary, "Al-Qādī al-Nuʿmān, Ismāʿīlī Law and Imāmī Shīʿism," 186.

conception of the religious and political authority of their leaders – both the Mahdi and the Mu'minid caliphs who were his successors – is of great importance for the issue of legal codification, and must now be examined.

The Almohads were not Shi'is in the strictest sense of the word, although their doctrine on the imamate shows influence of Shi'i models, and more specifically of Isma'ilism and the Fāṭimid caliphate.[56] The origins of the Almohad movement go back to a "prophetic" figure considered to be impeccable or infallible: this was the Masmuda Berber Ibn Tūmart, who was recognised as the *Mahdī* by his fellow tribesmen, as well as by his disciples coming from different Berber tribes. *Mahdī* in Arabic means "the rightly guided one" and is a term that Sunni doctrine applies to an eschatological figure destined to appear at the end of time to lead the Muslim community back to the state of religious perfection that it enjoyed under the rule of the Prophet Muḥammad. Closely connected with this eschatological meaning, the term has been applied to different historical figures who claimed to be reformers or political and religious renovators. By going against the mainstream, they presented themselves as *mahdī*s, or "rightly-guided ones," thus seeking to legitimise their break with the existing consensus: they could present a new way of doing things – presented as a *retour aux sources* – precisely because they were endowed with special powers and infallibility.[57] Ibn Tūmart died without issue and was succeeded by one of his disciples, the Zanāta Berber 'Abd al-Mu'min, and all the Almohad caliphs were his descendants. 'Abd al-Mu'min adopted an Arabic genealogy when he took the title of caliph. On his father's side, he claimed descent from the tribe of Qays, northern Arabs, one of the branches of which was the tribe of the Prophet, Quraysh. On his mother's side he claimed to be descended from the Prophet Muḥammad; among the Berbers, matrilineal descendance was considered more important than patrilineal.[58] As well as his genealogical legitimacy, 'Abd al-Mu'min was presented as endowed with special qualities: he had a special "light" which made him a "lamp" that illuminated the Almohads.[59]

56 Fierro, "The Almohads and the Fatimids," quoted above in n. 19.

57 The reconstruction of when and with which meaning Ibn Tūmart was called (or called himself) the Mahdi is a complex issue that involves determining the original context of the Almohad movement independently of later developments: see on this Maribel Fierro, "El Mahdi Ibn Tumart: más allá de la biografía oficial," in *Identidades, arabismo y dinastías beréberes* (*siglos XI–XIV*), ed. Miguel Angel Manzano and Rachid El Hour (Salamanca: Universidad de Salamanca, forthcoming).

58 Maribel Fierro, "Las genealogías de 'Abd al-Mu'min, primer califa almohade," *Al-Qantara* 24 (2003), 77–108; English translation in Fierro, *The Almohad Revolution*, V.

59 Michael Brett, "The Lamp of the Almohads. Illumination as a Political Idea in Twelfth Century Morocco," in Michael Brett, *Ibn Khaldun and the Medieval Maghrib*

These special qualities made him deserve God's delegation or caliphate. His rule was assimilated to the Divine Disposition or command, *amr Allāh*, mentioned in the Qur'ān, so that obeying him was the same as obeying God.[60] Although impeccability was not one of the attributes of the Almohad caliphs – as it was in the case of the founder of the movement, Ibn Tūmart – they do appear as the final judges in all situations, including religion, since salvation depended on obeying them, there being no other rival figures to compete with them in determining right from wrong from the religious point of view.[61] The early Almohad caliphs were very vocal in their dislike of the existence of divergence of opinions (*ikhtilāf*) and attempted to eliminate it both in the theological and the legal spheres.

This conception of the caliphate among the Almohads brings us to the issue of the religious and political elites. As already mentioned, the Sunni caliph shared religious knowledge with the scholars, the '*ulamā*', whose training and propagation were not his responsibility. The scholars, indeed, received their training by studying on an essentially informal basis, with teachers they themselves chose; thus they developed the necessary capacity to interpret God's revelation or to decide what precedents to imitate from those established by prior generations of scholars. They frequently made their living in jobs, the salary for which in the Islamic West was paid principally from pious bequests and, to a lesser extent, from salaries depending directly on the political power.[62] This contrasts with the Isma'ili situation where the caliph was the depository of religious knowledge which he received directly from God, so that under his government there was no room for *'ulamā'*, in the Sunni sense – that is, scholars who through their efforts reached personal interpretations of Revelation – but only for propagandists, *du'āt*, whose activities and livelihood depended directly on the Fāṭimid *imām*-caliph. In other words, they were missionaries charged with the transmission of the doctrine of the movement, a doctrine

(Aldershot: Ashgate, 1999), VI; and T. Nagel, "La destrucción de la ciencia de la *šarī'a* por Muhammad b. Tūmart," *Al-Qantara* 18 (1997), 295–304.

60 Émile Fricaud, "Origine de l'utilisation privilégiée du terme *amr* chez les Mu'minides almohades," *Al-Qantara* 22 (2002), 93–122; Salvador Peña, "El término de origen coránico *amr Allah* ("Disposición de Dios") y el linguocentrismo trascendente islámico, en torno al siglo XII," *Anaquel de Estudios Árabes* 22 (2011), 197–224.

61 Manuela Marín, "El califa almohade, una presencia activa y benéfica," in *Los almohades: problemas y perspectivas*, ed. P. Cressier, M. Fierro and L. Molina (Madrid: CSIC/Casa de Velázquez, 2005), 451–476.

62 Alejandro García Sanjuán, *Hasta que Dios herede la tierra. Los bienes habices en al-Andalus. Siglos X al XV* (Universidad de Huelva, 2002); English translation *Till God Inherits the Earth: Islamic Pious Endowments in al-Andalus (9–15th centuries)* (Leiden: Brill, 2007).

emanating directly from the *imām* and of which he and he alone was the guarantee.

In principle, this was the solution adopted by the Almohad caliphs not only as a result of the Shiʿi influence underlying the movement, but also because it solved a pressing problem: how to impose the new Almohad doctrines in the face of the rejection or reluctance of the existing religious elites. In fact, the adoption of the Shiʿi formula allowed the Almohad caliph to control directly the training and propagation of the religious elite, whose salaries depended on him. The recruitment of young men, from inside and outside the ranks of the followers of the movement, was organised; they received a specialised training according to the role that they were going to play, which in any case always included the memorisation of the professions of faith attributed to Ibn Tūmart. In fact, where Ibn al-Muqaffaʿ had not succeeded, the Almohads did: they imposed a single creed in the territories over which they ruled, thus forcing both non-Almohad Muslims and non-Muslims to convert to Almohadism.[63] The Almohad religious elite received the name of *ṭalaba*, "students," and fell into two main groups: the *ṭalaba* who accompanied the Almohad caliph on his journeys – *ṭalabat al-ḥaḍar* – and the *ṭalaba* of the Almohads who held different political and religious functions in the territory under Almohad control and generally accompanied political and military dignitaries. As far as the former group, which included physicians, philosophers and theologians, the caliph met with them in order to suggest subjects for discussion, which were often related to theological and metaphysical matters.[64] This close interaction between the Almohad caliph and their "scholars" reminds us again of what we have seen in the case of the Fāṭimids.

A member of these Almohad religious elites was Averroes (d. 595/1198), who served the Almohad caliphs as philosopher, jurist and *qāḍī*. He wrote a legal work entitled *Bidāyat al-mujtahid wa-nihāyat al-muqtaṣid*, i.e. "The beginning for him who is striving towards a personal judgement and the end for him who contents himself with received knowledge." In this work, Averroes recorded the legal divergences among the four Sunni schools of law together with the solutions proposed by the founders of old schools of law that had eventually

63 Maribel Fierro, "Conversion, Ancestry and Universal Religion: the Case of the Almohads in the Islamic West (sixth/twelfth-seventh/thirteenth centuries)," *Journal of Medieval Iberian Studies* 2.2 (2010), 155–174; reprinted in M. Fierro, *The Almohad Revolution*, XIII. Also Maribel Fierro, "The Religious Policy of the Almohads," *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (forthcoming).

64 Émile Fricaud, "Les *talaba* dans la société almohade (le temps d´Averroés)," *Al-Qantara* 18 (1997), 331–388.

disappeared, as well as Muslims of the first generations. References to "heretics" such as the Kharijis and the Shiʿis are almost non-existent, but Averroes did mention the Ẓāhiris (literalists) considered deviants by many Sunnis. Averroes did not show any preference for a specific school of law and he rarely proposed new solutions. The *Bidāya* is striking not only for the absence of any clear-cut inclination for a specific school of law, but also for its clarity of exposition, its freedom of thought, and its concern with logic and rationality. I have elsewhere proposed that Averroes' *Bidāya* might have been an attempt to achieve something similar to what Ibn al-Muqaffaʿ had suggested, that is, a first step (collection of different legal opinions) towards a further stage (election on the part of the caliph of certain solutions which would eventually be codified), in the same way that Qāḍī al-Nuʿmān first compiled a collection of different materials and then produced his legal code under the supervision of the Fāṭimid caliph.[65] Many works written under the reign of the Almohad caliphs were presented as having been inspired by them. Also, as under the Fāṭimids, the Almohad period has left no trace of activity in the production of legal opinions (*fatāwā*), especially if we compare it with the preceding periods from which comes most of the materials collected in the extant compilations of *fatāwā* in the Islamic West. Together with the absence of *muftī*s activities, the Almohad period produced a high number of caliphal "letters" conveying orders and regulations from the part of the caliphs.[66]

4 Synchronies, Influences or Just Similar Solutions for Similar Problems?

The Almohad concern for systematisation and hierarchisation of knowledge and the emphasis on principles over casuistry is reflected in Maimonides' codification of Jewish law, the famous *Mishneh Torah*. Now, Maimonides was scholar whose formation took place in the Maghrib under the Almohads.[67] The same concern and emphasis is to be found under the reign of Alfonso X

65 Maribel Fierro, "The Legal Policies of the Almohad Caliphs and Ibn Rushd's *Bidāyat al-mujtahid*," *Journal of Islamic Studies* 10 (1999), 226–248; reprinted in M. Fierro, *The Almohad Revolution*, XII.

66 See Pascal Buresi and Hicham El Allaoui, *Governing the Empire. Provincial Administration in the Almohad Caliphate (1224–1269)*, trans. Travis Bruce (Leiden: Brill, 2012).

67 See on the Almohad context of Maimonides' education and early years Sarah Stroumsa, *Maimonides in his World: Portrait of a Mediterranean Thinker* (Princeton: Princeton University Press, 2009).

the Wise (r. 1252–1284), whose father Fernando III (r. 1217–1252) had defeated the Almohads and taken possession of their lands in the Iberian Peninsula. Alfonso X the Wise's political and cultural project could be seen as part of the legacy of the Almohad empire, a counterpart of Byzantine legacy in the construction of the Ottoman empire.[68] Alfonso X's project included a legal codification, *Las Siete Partidas*, made necessary by the alleged fact that after the Goths had united the law in *Hispania*, the written code was lost and the laws forgotten; however, various groups retained remnants of the code, with the result that each city tried to reassemble the laws individually, producing the variety of local systems (*fueros*), based on the older system. Alfonso X's legislative activities were meant to put an end to the legal diversity of the territories under his rule.

There is a famous text describing in what sense Alfonso X the Wise is to be considered the author of the many books that were compiled in his *scriptorium*:

> The king makes a book, not because he writes it with his hands, but because he sets forth the reasons for it, and he amends and corrects and improves them and shows how they ought to be done; and although the one whom he commands may write them, we say nevertheless that the king makes the book. And again when we say that he king makes a palace or any other work, it is not said because he makes it with his hands, but because he ordered that it be made and gave the things that were necessary for it.[69]

Thus the king produces the book not because he physically writes it, but because he inspires and corrects its contents. This text echoes what was said of the Almohad caliph's intervention in the writing of books and of the Fāṭimid

68 Maribel Fierro, "Alfonso X 'the Wise', the Last Almohad Caliph?" *Medieval Encounters* 15 (2009), 175–198; reprinted in M. Fierro, *The Almohad Revolution*, XIV.

69 Joseph F. O'Callaghan, *Alfonso X and the Cantigas de Santa María: a Poetic Biography* (Leiden: Brill, 1998). The quotation is from the *General Estoria*: "El rey faze un libro, non por quel escriua con sus manos, mas por que compone las razones del, e las emienda et yegua, e enderesça, e muestra la manera de cómo se deuen fazer, e desi escriue las qui el manda, pero dezimos por esta razon que l rey faze el libro. Otrossi quando dezimos: el rey faze un palacio o alguna obra, non es dicho por quelo el fiziesse con sus manos, mas por quel mando fazer e dio las cosas que fueron mester para ello; e qui esto cumple aquel a nombre que faze la obra, e nos assi ueo que usamos delo dezir…," taken from Laura Fernández, "Transmisión del saber – transmisión del poder. La imagen de Alfonso X en la Estoria de España, Ms. Y-I-2, RBME," *Anales de Historia del Arte* (2010), 187–210, at 191.

al-Muʿizz's intervention in the compilation of the *Daʿāʾim al-islām*, and inspiration on the part of the caliph also plays a crucial role in Ibn al-Muqaffaʿ's suggestion of caliphal codification.

The Fāṭimid code was produced in the fourth/tenth century and it was in the sixth/twelfth century that the Fatimid caliphate fell in Egypt. Fatimid influence on the Norman kings of Sicily is well known and it was their successor, the emperor Frederick I, who is linked to the revival of the Justinian code in Western Christianity during the twelfth century. The rise of the Almohads took place in the same century. Fāṭimids and Almohads were the two caliphal dynasties that can be linked to a legal codification project in the Islamic world during the centuries between the failed attempt of the early ʿAbbāsid caliphate and the legislative activities of the Ottoman sultans. The concern for legal unification and synthesis appears as a common feature on both sides of the Mediterranean, together with the trend of "sacralising" the ruler[70] and the formation of new intellectual and religious elites.

70 On the trend to unite all power and authority in a single representative of God on earth as represented by the king-priest Melchizedek see Michael Brett, *The Rise of the Fatimids. The World of the Mediterranean and the Middle East in the Tenth Century CE* (Leiden: Brill, 2001), especially 428–434.

CHAPTER 7

Law and Codification

Conclusion

John Hudson

Issues of codification have been very important for legal historiography, including for discussions of legal institutionalisation.[1] Furthermore, whilst codification is not a necessary aspect of legal institutionalisation, examination of codification provides an entry point for wider consideration of institutionalisation, for example on the subjects of written and oral, specialised knowledge and its uses, abstraction and continuity.[2]

Significantly, the papers above emphasise the varieties of codification, distancing themselves from an acceptance of Justinian's *Corpus iuris* as the archetype of codification against which others are to be judged.[3] This allows a more complete examination of particular codification efforts, which can then be used to draw better comparisons. Such comparison may then reveal similarities as well as differences. As Conte and Ryan show, the production of late twelfth- and early thirteenth-century canon law collections demonstrates the limits of control from above.[4] Rather, scholars played a very significant role, as they also did in the Islamic world.[5] Scholars' role in producing texts with the characteristics of institutional fixity is demonstrated by consistency of the glosses that accompany the papal decretals in the collections. Meanwhile collective learned opinion carried great weight in the Romano-canonical world, just as it did in that of the far-from codified English Common Law.[6] Thus comparison reveals that legal developments in, for example, Western Christendom and Islam might at certain points share characteristics, whilst also revealing

1 See e.g. above, Humfress, 29, Conte and Ryan, 75–7.

2 See above, Preface, Algazi.

3 See esp. above, Humfress, pp. 27–29.

4 See above, Conte and Ryan, pp. 86–87.

5 See Conte and Ryan pp. 89–91. See also Stolte pp. 59–60, on *iuris periti* in Rome from the late Republic until the mid-third century, pp. 65–72, on Byzantium.

6 Conte and Ryan p. 91, noting the use of guild vocabulary; J.H. Baker, *The Law's Two Bodies: Some Evidential Problems in English Legal History* (Oxford: Oxford University Press, 2001); also, more generally, A.W.B. Simpson, "The Common Law and Legal Theory," in his *Legal Theory and Legal History: Essays on the Common Law* (London: Hambledon Press, 1987), 359–382.

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differences not just from Justinian but also from, for instance, the actions of Emperor Frederick II.[7] In addition, it suggests a greater complexity in legal development than might be suggested by rigid application of distinctions such as state law and jurist's law.[8]

At the same time, a desire to uncover similarities that may have been concealed by historiographical traditions must not lead to neglect of differences. There is the continuing development of Roman law in Byzantium, in marked contrast to its interrupted history the Christian West.[9] There is the development of Law, aside from canon law, as the secular science *par excellence* especially in the universities of France and Italy, in marked contrast to the situation in the Islamic world. And as Fierro points out, whilst there may have been attempts at codification of Islamic law with some resemblances to work done in Christendom, the Islamic examples were limited in their success.

Comparative study of codification, therefore, illuminates the wider concerns of this volume. It shows how the assumption of certain criteria or archetypes, in this case the Justinianic form of codification, can limit analysis; indeed, it may start to seem that the Justinianic case is the anomaly, at least in the pre-modern period. It shows how divergences need not only be between Islam, Byzantium, and Western Christendom.[10] Such complexity would be reinforced if added to the analysis were bodies of customary law, most clearly – because of the sources and because of later history – that which grew into the English Common Law. As in the world examined by Conte and Ryan, so too in England the twelfth century was a period of marked change in law and in legal learning.[11] Yet there was no codification, the treatise known as *Glanvill* rather being a legal manual on procedure, more like the *Ordines judiciarii*. And there was no body of lawyers learned in scholarship of the secular royal law; rather control of legal learning was as yet primarily in the hands of royal justices. When legal training and professional lawyers did appear for the royal courts it was outside the universities. The interplay of law and learning, the importance of the person as well as the text as the carrier of legal culture, are characteristics the Common Law would share with Roman law areas and Islam, but their forms were very different.

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7 Conte and Ryan, pp. 94–95.

8 Note Fierro, below, p. 99.

9 See above, Stolte.

10 See further Fierro, pp. 98–101.

11 Note the arguments put forward in J.G.H. Hudson, "From the Leges to Glanvill: Legal Expertise and Legal Reasoning in Twelfth-Century England," in *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen*, ed. S. Jurasinski et al. (Leiden: Brill, 2010), 221–249.

If legal codification is one entry point for the analysis of institutions and institutionalisation, as well as one area for testing problems of definition and categorisation, other aspects of law could also be examined. An obvious one is the nature of courts, in particular any developments from assemblies that were multifunctional or did not distinguish between functions, to ones that were specialist law courts.[12] Such developments are visible, for example, in ecclesiastical courts in England. Until the twelfth century bishops had normally heard ecclesiastical cases either in the general meetings of the diocesan synod or perhaps in county courts. In the later twelfth century, however, non-syndal diocesan courts started to appear, presided over by the bishop or his "official," his chief legal servant. At lower levels, disputes might be heard before archdeacons or their subordinate rural deans.[13]

Beyond courts, can other aspects of law and the administration of justice be termed institutions, or simply be seen as aspects of institutionalisation or characteristics of particular kinds of institution? One thinks of particular documents, the *libellus* in canonical litigation, the writ in English Common Law; or of procedures and set types of action. Can these be described in themselves as institutions? Or need an institution have some human members as one of its constituent elements?

Such issues, therefore, return us to the broadest of questions. Need processes of channelling, of standardising or routinising, be necessary characteristics both of law and of institutions? And then, on beyond any confined legal field, how does law in its various forms shape institutions and institutions shape law? Does the particular nature of law in particular areas and times have a major effect on institutionalisation, for example on monasticism, or on commercial gilds? And how does the answering of these questions incorporate the issues of definition or characterisation of institutions raised earlier in this volume? Employing, for example, W. Richard Scott's "Three Pillars of Institutions"

12 Note e.g. S.M.G. Reynolds, "Assembly Government and Assembly Law," in *Gender and Historiography. Studies in the Earlier Middle Ages in Honour of Pauline Stafford*, ed. J.L. Nelson, S.M.G. Reynolds, and S.M. Johns (London: Institute of Historical Research, 2012), 191–199.

13 See C. Morris, "From Synod to Consistory: the Bishops' Courts in England, 1150–1250," *Journal of Ecclesiastical History* 22 (1971), 115–123, at 116–120; R.H. Helmholz, *The Oxford History of the Laws of England, Volume 1: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 135–141. For cautions concerning the position of "official," D.M. Smith, "The 'Officialis' of the Bishop in Twelfth- and Thirteenth-Century England: Problems of Terminology," in *Medieval Ecclesiastical Studies in Honour of Dorothy M. Owen*, ed. M.J. Franklin and C. Harper-Bill (Woodbridge: Boydell, 1995), 201–220.

as outlined by Humfress, may help to disrupt assumptions and to avoid overly sharp distinctions between the institutionalised and the non-institutionalised. Yet they must not produce an unwillingness to make any generalisation; as the essays in this section have shown, awareness of complexity does not preclude willingness to make significant conclusions regarding both similarity and divergence.

Resources and Power

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The present section analyzes some of the main questions concerning State funding, a core element of any comparison between the West and the Islamic and Byzantine worlds. It also deals with the extraction of resources and the development of fiscal systems, and with the institutions that enabled these. The three starting-points are: How was political activity funded? How were political structures influenced by the manner of the funding? What were the social and economic consequences of the circulation of resources activated by politics? Resources are understood in a broad fashion, as the incomes of a given community but also as the procedures, rules and practices regulating the social interactions that determine production, distribution and consumption.

The first three papers in this section deliberately take a broader and more chronologically extended approach than those in the preceding section on Law and Codification. Examining types of States and revenues in the feudal world, the significance of tithe as form of extraction, and the place assigned to tribute and plunder in historiographical models, Carocci and Collavini's article invites discussion of the extent to which the western models of the relationship between politics and resources are also applicable to the Byzantine or Islamic areas. The question of land-tenure, how Muslims owned land (if they did), and the legal and fiscal status of such land in the early Islamic state, is developed in Kennedy's article. Focusing on Byzantium, Prigent addresses the impact of taxation on the economy at large, the strategic implications of payments in kind, in cash or in service, the nature of tax-assessment, units and the relationship between the areas of levy, storage and investment of the fiscal product.

In addition, the present section includes an article on Sicily, a point of telling inter-section between Western Christendom, Byzantium, and Islam. Nef's analysis on Sicily – where the Hauteville dynasty built a quite original State that combined diverse referential systems but whose fiscal heart was of Islamic inspiration – treats the institutions that enabled the extraction of resources. She highlights the actors who carried out the extraction, and analyses the associated practices and representations.

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CHAPTER 8

The Cost of States

Politics and Exactions in the Christian West (*Sixth to Fifteenth Centuries*)

*Sandro Carocci and Simone M. Collavini**

1 Introduction

We would like to start with a prisoner for tax evasion and with a "fiscal biography." Around the year 1430 the Florentine Giovanni Cavalcanti, in jail for not paying his taxes, wrote: "As the wind moves the sand from one place to another, so do taxes, with the aid of wars, move the wealth of Florence from the lesser citizens to the greater."[1] It is a lucid testimony to the effects of the circulation of resources activated by the fiscal system. These effects emerge clearly from what we might call the only medieval "fiscal biography" available, that of the Florentine humanist Matteo Palmieri. Matteo, a bit of an obsessive chap, from the time he was 21 until his death at 69 noted down daily in his "fiscal diary" (*Ricordi fiscali*) all the moneys he had paid and received from the Florentine tax authorities: probably he is the only man in the Middle Ages for whom we know how much tax he paid during his whole life. These taxes were *prestanze*, in other words non-refundable, compulsory loans that guaranteed an annual interest. And the moneys received were just that, interest payments on previous *prestanze*. Matteo's "fiscal diary" gives us a shocking result: from the age of 34 until his death, except for a few years when tax demands were very heavy, Matteo got back as interest from the fiscal system more than he had paid out in taxes. His is not an exceptional case; it was actually the norm among members of the Florentine oligarchy. For the happy families at the apex of the "Florentine Republic" the tax system gave out more than it took in.[2]

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* This essay was conceived and prepared by two authors. Paragraphs 1, 2, 5.2 and 7 were written by Sandro Carocci; paragraphs 3, 4, 5.1 and 6 were written by Simone M. Collavini. The conclusion (paragraph 8) was written together.

1 "Come il vento tramuta la rena d'un luogo in un altro, così le sustanze di Firenze dagl'impotenti ai potenti cittadini si promutano, sotto il nome di gravezze, col favore delle guerre," G. Cavalcanti, *Istorie Fiorentine,* ed. G. di Pino (Milan: Aldo Martello, 1944), 15.

2 Elio Conti edited and analysed Matteo Palmieri's *Ricordi fiscali* (*1427–1474*)*: con due appendici relative al 1474–1495,* ed. E. Conti (Studi storici, 132–135) (Rome: Istituto storico italiano per il Medio Evo, 1983). For the balance sheet between payments and collections cf. Conti, *L'imposta*

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Florence is a peculiar case; but it clearly shows social and economic dynamics recognisable, albeit in different forms, in the various mechanisms through which states and political activities were funded in the Middle Ages. Even in states that were simpler than Florence the funding of institutions and politics had the side effect (and not a coincidental one) of transferring resources from producers to the hegemonic classes. In fact, no system for funding states is socially neutral in how it extracts or redistributes. Some scholars (for example, economic anthropologists Blanton and Fargher) insist that there is a link between elaborate or "heavy" taxation systems and a bottom-up control of state machinery which might lead to greater spending on public goods.[3] But this sociological interpretation seems to be proved wrong by historical facts – medieval ones, at any rate. In the medieval West it was precisely the best performing tax systems that most enriched the dominant classes.

We will be returning to these important dynamics several times. In any case, the functioning of taxation systems is not the central focus of our paper. Our main purpose is different: we would like to show the models and ideal-types through which historians of the Christian West have dealt with a topic, state funding, that represents a core element of any possible comparison between the West and the Islamic or Byzantine worlds. As a consequence, we will look at the ways in which historians have thought about and studied the funding of institutions and politics. In doing so, we will try not only to set out historiographical models and interpretations, but also to annotate them, suggesting some additions of our own.

Our focus is going to be on the ways in which scholarship has dealt with three basic questions: (1) How was political activity funded, or to put it more precisely, how were the creation and functioning of political structures and institutions financed? (2) How were political structures themselves influenced by the manner of the funding? (3) What were the social and economic consequences of the circulation of resources activated by politics?

In some models these three questions are at the centre of historiographical reconstruction. This is true for the "Tax Based States" of Rome and Byzantium and even more so for the "Tax State" during the late Middle Ages and the first part of the Modern Age, as theorised by what is known as "New Fiscal History."

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diretta a Firenze nel Quattrocento: 1427–1494 (Studi storici, 136–139) (Rome: Istituto storico italiano per il Medio Evo, 1984), 193.

3 R. Blanton and L. Fargher, *Collective Action in the Formation of Pre-modern States* (Berlin: Springer, 2008); Blanton and Fargher, "Collective Action in the Evolution of Pre-modern States," *Social Evolution & History* 8 (2009), 133–166. See below, n. 17.

In other cases the questions have only a marginal importance (or are absent altogether).

In this paper, we will be using the concept of state as synonymous with political structures and institutions. To define an ideal-type of "state," parameters have been used such as the centralisation of the legitimate authority and the specialisation of governmental roles. These are important criteria, as is the ideology of public power.[4] Nevertheless these parameters are not a perfect fit for our own purposes, because they narrow the field of analysis too much. We think that in our case much more useful a definition of State would be: any political construction able to use coercion legitimately and autonomously in the performance of military, judicial and fiscal functions.

To conclude this introduction, we draw your attention to two recent and important taxonomies. The first is that developed by the New Fiscal History. In three volumes edited by Richard Bonney and Mark Ormrod a revision of the interpretative model of Schumpeter was developed which distinguishes, on the basis of the fiscal system, three types of state present in Europe between antiquity and the Early Modern Age: "Tribute States," "Domain States" and "Tax States." A central issue of this model is the transition from the Domain State to the Tax State. So, the Tribute State is an ideal-type defined loosely and imprecisely as based on the financial prevalence of plunder and extortion. Domain State and Tax State are defined much more articulately, maybe too much so: for the time being we need only remember that in the former ideal-type the rulers rely on their own patrimonial and seigneurial revenues, while in the Tax State revenues are raised from taxation over all the subjects of the state.[5]

4 C. Wickham, *Framing the Early Middle Ages. Europe and Mediterranean, 400–800* (Oxford: Oxford University Press, 2005), 56–62 and 303–304; *Staat im frühen Mittelalter*, ed. S. Airlie, W. Pohl and H. Reimitz (Vienna: Austrian Academy of Sciences, 2006); an introduction to the controversy between H.W. Goetz and J. Fried on the early medieval state in J. Jarnut "Anmerkungen zum Staat des frühen Mittelalters: Die Kontroverse zwischen Johannes Fried und Hans-Werner Goetz," in *Akkulturation. Probleme einer germanisch-romanischen Kultursynthese in Spätantike und frühem Mittelalter*, ed. D. Hägermann, W. Haubrichs, J. Jarnut (Berlin, New York: De Gruyter, 2004), 504–509; for a recent overview of the debate in Germany, see J.R. Lyon, "The Medieval German State in Recent Historiography," *German History* 28 (2010), 85–94. For a critical view on the use of the concept of state in the early Middle Ages, see M. Innes, *State and Society in the Early Middle Ages* (Cambridge: Cambridge University Press, 2000), 251–263.

5 *Economic Systems and State Finance*, ed. R. Bonney (Oxford: Clarendon Press, 1995); *The Rise of Fiscal State in Europe, c. 1200–1815*, ed. R. Bonney (Oxford: Oxford University Press, 1999); *Crisis, Revolutions and Self-sustained Growth. Essays in European Fiscal History, 1130–1810*, ed. W.M. Ormrod, M. Bonney and R. Bonney (Stamford: Shaun Tyas, 1999); see also below, n. 28 and 38–39.

At the same time another taxonomy was developed by Chris Wickham. This one is more a taxonomy of types of revenue than of types of state. According to Wickham states can in fact use more than one type of revenue. Anyway, state resources are distinguished into three ideal-types. (1) *Ad hoc* tributes, the simplest form of tax collection. These are very simple payments, irregular in incidence and frequency and determined by relationships of military force. (2) Rents, originating from the lands of the king or princes. (3) Taxes, i.e. "resources extracted by rulers from all subjects according to defined or more or less systematic criteria." Taxation marks the capacity of rulers "to extract wealth from their subjects as a whole on a systematic basis" and, in so doing, "to separate themselves structurally from the ruled."[6]

In his taxonomy Wickham explicitly uses the notion of Weberian ideal-type. His categories do not claim to be objective descriptions, but heuristic tools: they are pure abstractions, which identify and consider as fundamental traits only the processes of resource extraction operated by states. Like any Weberian ideal-type concept, they are patterns that do not describe reality, but are rather abstract models to understand and compare the many shapes assumed in practice by the forms of taxation. Such an approach is absent from the New Fiscal History, which in order to present its typology of states reverts, in essence, to a notion of a descriptive economic model, where the reference to the concrete reality of fiscal and socio-economic relationships is a key element. Parameters and variables are then multiplied in order to provide a representation as comprehensive as possible (eighteen parameters and a number of variables – at least threefold – appear, for example, for each state model, in a summary table of the theorisation of Bonney and Ormrod). In the actual use that has been made by historians, the differences between economic models and Weberian ideal-types are still limited. For our part, we prefer to speak of ideal-types, rather than models, to make it clear also in the terminology that we are not interested in describing in detail the different historical realities but rather in highlighting the main features that for us are constitutive. We therefore consider in the same way as ideal-types models made by New Fiscal History, as well, it must be said, as other famous theories, starting from that of Marc Bloch's *Société féodale*.

Our paper will begin invoking a vision of the fiscal history of the medieval world that has emerged as dominant largely thanks to the influence of the Blochian reading, and then focus on the problem of the end of the old

6 C. Wickham, "Lineages of Western European Taxation, 1000–1200," in *Actes. Colloqui Corona, municipis i fiscalitat a la baixa Edat Mitjana*, ed. M. Sánchez and A. Furió (Lérida: Institut d'Estudis Ilerdencs, 1997), 26–27.

taxation. The main section of the paper will be devoted to examining the interpretations and models of analysis developed by historians for the different periods, putting them in a roughly chronological order. As a counterpoint, we will provide some critical remarks and interpretative proposals.

2 The Traditional Great Narrative

To simplify, we can say that for some time there has existed a widely accepted Great Narrative: the story of the transition from Roman tax state to the new tax state of the late Middle Ages (the precursor for the "modern state"). According to this interpretation, in between there are the crisis of the invasions and the "Feudal State," characterised by politics of land and by "the impossibility of salary" (that is, the impossibility of funding politics and the state in money), with their consequences in terms of the weakness of states and political fragmentation. Let us take a glance at the main elements.

Economic and social historians of Rome are still bitterly divided when it comes to framing the social and economic structures of the Late Roman Empire. They cannot agree on how "modern" it was; on its degree of commercialisation and monetarisation; on the general standards of living; as well as on the existence of cyclical or anticyclical trends in the imperial economic system. However, no one doubts the importance within the Roman economic system of the presence of a state fed by taxes, mainly land taxes. In addition, there is a consensus that such a state extracted a sizeable share of produce, framing the entire economic system through direct redistribution and stimulating financial and trade activity connected to the state machine. There are, however, differing estimates as to the size of this state intervention and its relative importance compared to other commercial networks. Whatever the case may be, the state was an independent source of demand, which directly affected the complexity of the structures of agrarian and artisanal production. This complex tax system and its private intermediaries fostered the commercialisation of society through places and operators who were largely dependent on state infrastructures.[7]

7 For a general overview of studies and interpretations, see E. Lo Cascio, "Mercato libero e 'commercio amministrato' in età tardoantica," in *Mercanti e politica nel mondo antico*, ed. C. Zaccagnini (Rome: L'Erma di Bretschneider, 2003), 307–325; E. Lo Cascio, "Impero, città e relazioni commerciali nel Mediterraneo romano," in *Gli imperi. Dall'antichità all'età contemporanea*, ed. R. Ben-Ghiat (Bologna: Il Mulino, 2009), 73–92; P. Bang, "Trade and Empire. In Search of Organizing Concepts for the Roman Economy," *Past & Present* 195 (2007), 3–54.

Whether or not one agrees that the state and taxation played very prominent roles in the Late Roman world, there is no doubt that in the Middle Ages the picture proposed by this Great Narrative is completely different. The most influential theory remains that of the *societé féodale* of Marc Bloch.[8] At its heart is the idea of "the impossibility of salary," that is, the impossibility of funding politics and the state in money. Resources come almost entirely from land and tribute. Between the sovereigns and the great landowners there is a structural resemblance: politics means grants of land and of rents therefrom. Except during phases of conquest, the resources mobilised by the state are marginal to the economic system; in economic terms those who govern act primarily as great landowners. Political fragmentation and the limited extraction of surplus by the state and the aristocracies prevent the concentration of riches capable of activating extended trade and financial circuits.

In its most recent formulations this model has undergone some important modifications. Scholars have critiqued its implicit teleology and value judgments that put the more complex states at the top of a scale of values and the simplest political systems at the bottom. Or they have highlighted new aspects in the passage between the different ideal-types of state. For example, what Byzantinists call the "Birmingham School" (that is above all John Haldon, Michael Hendy and Chris Wickham) have posited a fundamental difference between the ancient and medieval worlds: an economic structure which had at its centre enormous state demand was replaced by a new model in which a series of private aristocratic demands activated exchanges and markets.[9] This qualitatively new system becomes dominant during the early Middle Ages and characterises Western Europe until the late Middle Ages. It is another distinguishing mark between the Christian West, on the one hand, and the Islamic or Byzantine worlds on the other.

There have been many other revisions and additions, but, on the whole, they have not dented the model. The notion of Feudal State has survived

8 M. Bloch, *La société féodale* (Paris: Albin Michel, 1939–1940).

9 W. Brandes, *Finanzverwaltung in Krisenzeiten. Untersuchungen zur byzantinischen Administration im 6.-9. Jahrhundert* (Forschungen zu byzantinischen Rechtsgeschichte, 25) (Frankfurt-am-Main: Löwenklau-Gesellschaft, 2002) and V. Prigent (in this volume, below) contain the best introductions to the historiography on the Byzantine Empire; an obvious reference is also J. Haldon, *The State and the Tributary Mode of Production* (London, New York: Verso, 1993); C. Wickham, *Land and Power. Studies in Italian and European Social History, 400–1200* (London: British School at Rome, 1994), 7–40 and 43–74; Wickham, *Framing.* For a comparison Byzantium-Islam, see J. Haldon, "Bizancio y el temprano Islam: análisis comparativo de dos formaciones sociales tributarias medievales," *Anales de historia antigua, medieval y moderna*, 35/36 (Buenos Aires: Eudeba, 2003), 7–60.

almost intact the deconstruction of its most popular and authoritative story line: the establishment of feudo-vassal institutions and the knightly nobility as a result of "the impossibility of salaries," thanks to the successful institutional and military innovations introduced by the Pepinids.[10] Nor has the theory of the "Feudal Revolution," which insisted on the changes of the late tenth-early eleventh centuries, had a great impact on our topic. The problem of how the state was financed and the effects of this on society are not dealt with by the "mutationists" who insist rather on other aspects that are typical of the transition from one society to another (violence; forms of the representation of power; localisation of extraction circuits).[11]

3 The End of Ancient Fiscality

The most radical criticism of this Great Narrative came from scholars who, with various nuances, have maintained that the Roman taxation system survived on into the early Middle Ages. J. Durliat and G. Bois claimed that the Roman taxation system held on until the Carolingian Age; they have been severely criticised both on their reading of key sources like the polyptychs (J.P. Devroey) and on a more general level (C. Wickham).[12] More successful has been the interpretation suggested by W. Goffart, centred on the techniques of accommodation deployed during the age of barbarian settlements. Goffart maintained that the rights granted to the barbarians were in large part not lands, but land-tax shares. The transformation of Germanic warriors from stipendiaries into possessors was, therefore, not an immediate effect of their

10 S. Reynolds, *Fiefs and Vassals* (Oxford: Oxford University Press, 1994); see also, for a new interpretation of the "Pepinid revolution," P. Fouracre, *The Age of Charles Martel* (London: Longman, 2000).

11 The classic work is J.P. Poly and E. Bournazel, *La mutation féodale. X^e–XII^e siècles* (Paris: PUF, 1980); for the historiographical background and the debate that took place after 1992 see the bibliographical references in S. Carocci, "Signoria rurale e mutazione feudale. Una discussione," *Storica* 8 (1997), 49–91; and T.N. Bisson, *The Crisis of the Twelfth Century. Power, Lordship, and the Origin of European Government* (Princeton: Princeton University Press, 2009).

12 J. Durliat, *Les finances publiques de Dioclétien aux Carolingiens* (*284–889*) (Beihefte der Francia 21) (Sigmaringen: Thorbecke, 1990); and G. Bois, *La mutation de l'an Mil* (Paris: Fayard, 1989); J.P. Devroey, "Polyptiques et fiscalité à l'époque carolingienne: une nouvelle approche?" *Revue belge de philologie et d'histoire* 63 (1985), 783–794; and C. Wickham, "La chute de Rome n'aura pas lieu," *Le Moyen Age* 99 (1993), 107–126.

settlement, but the outcome of a long crisis in the taxation system.[13] According to this interpretation, early in the Middle Ages a taxation system intermediate between the Roman and the feudal was still functioning. Taxation had a certain role in financing state machinery and the army and it was important in shifting resources from producers to dominant groups. In the long run the upheavals produced by the invasions and by the tax immunity enjoyed by the conquerors put an end to the central importance of the taxation system and reduced taxation to a marginal economic component. According to this interpretation, this was a gradual process rather than a "revolution." This interpretation may help us to explain what appears to emerge from the archaeological data, such as the only gradual decrease in Mediterranean trade astride the fall of the Roman Empire: the survival of a fiscal circuit sustained demand for luxury goods.

This explanation of the transition between Antiquity and the Middle Ages, based on the gradualness and hybridisation of structures, has enjoyed a certain success, though not a universal consensus. Wickham in *Framing the Early Middle Ages* offers a very different explanation. The barbarian warriors and their leaders immediately (or very soon) received lands and not tax-shares: first of all, this is due to the fact that they wished to transform themselves from paid professional warriors into aristocrats and possessors, in keeping with the Roman model of social eminence. The few taxes that survived into the age of the invasions became economically marginalised.[14]

The end of Rome left space for societies that were more localised and differentiated, which Wickham proposes to read through two ideal-types, that of the feudal society and that of the peasant-based society. The latter is a society that, because of the nearly total absence of state structures and the marginality of aristocracies, finds itself outside the "feudal tributary mode of production." We therefore do not consider at length this important model, which, at least in its pure form, has no place for state taxation (except in the case of *ad hoc* tributes). In what was once Roman Europe, at least from what can be gathered from the written sources, we have trouble recognising any society like this in its pure form, (partly because the appearance of written documents is itself a sign

13 E.g. W. Goffart, *Barbarians and Romans, a.d. 418–584: The Techniques of Accommodation* (Princeton: Princeton University Press, 1980); W. Goffart, "The Technique of Barbarian Settlement in the Fifth Century: A Personal, Streamlined Account with Ten Additional Comments," *Journal of Late Antiquity* 3 (2010), 65–98; cf. also, about Gothic Italy, W. Pohl, "*Per hospites divisi*. Wirtschaftliche Grundlagen der langobardischen Ansiedlung in Italien," *Römische historische Mitteilungen* 43 (2001), 179–226.

14 Wickham, *Framing*.

of their transformation in feudal societies). But the ideal-type is an effective instrument for reading areas that have no – or very few – written sources and are known mainly through archaeology.[15] We can also recognise several marginal areas or entire societies that have similar characteristics, but in mixed proportions with those that are properly speaking feudal.

4 New Models, New Problems

While the historiographical mainstream for the centuries following the end of Roman taxation has remained within the perimeters of Bloch's Great Narrative, it has profoundly renewed it, partly thanks to interpretative categories explored by scholars from other disciplines. Among the most recent we would like to mention two. One has been advanced by the economists D. North, J. Wallis and B. Weingast who distinguish natural states from open-access states: the former based on the establishment of a monopoly of political power used to extract revenue; the latter based on a market-like principle in which revenue extraction and public spending are held in check by competitive pressures between politicians.[16] A second interpretative category has been proposed by the economic anthropologists R. Blanton and L. Fargher. They distinguish between states based on external and internal revenues. Internal revenues are drawn broadly from most of a state's population, and are those furnished by taxation on the production, work and trade of a large subjected population. External revenues typically are drawn from a much narrower subset of the population (often under direct state control) or from foreign sources directly controlled by the ruler; they derive from a small base or few collection points, such as royal estates and slaves, control of long-distance trade, external warfare, and empire directly controlled by ruler.[17] Perhaps a little paradoxically, according to this model external revenues favour the strength of the rulers, while internal revenues increase the contractual power of the subjects.

These models are certainly worth discussing, but for the moment let us leave them aside because they have a sociological physiognomy in which history serves mainly as an abstract support for general categorisations.

15 E.g. R. Francovich and R. Hodges, *Villa to Village. The Transformation of the Roman Countryside in Italy, c. 400–1000* (London: Duckworth, 2003).

16 D.C. North, J.J. Wallis and B.R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009).

17 Blanton and Fargher, *Collective Action*; cf. also Blanton and Fargher, "Collective Action."

Other analytical models are more effective. And it is on these models that we shall be concentrating our attention in the following pages, going through them in chronological order.

Let us start off with an issue that concerns the entire Middle Ages: the abandonment of the old interpretation according to which the states that extracted few resources from their subjects did so because they had no other choice. On this point there has been a scholarly about-face; with very few exceptions there is now a consensus on the fact that expenditures were generally the prime mover in determining how much revenue to extract, instead of revenues determining expenditures. Examples of this about-face may be found in studies of every period of the Middle Ages and the Early Modern Age, but for the time being we will stick to Wickham's explanation of the crisis of ancient taxation that clarifies the process very well.[18] This crisis was not due to the rulers' incapacity, but to the fact that taxes had, at least in part, become superfluous with respect to the needs of the successor states (the clearest example is that of the Vandals). Taxing requires a considerable investment of political resources (to convince subjects to pay) and technical know-how (to keep the fiscal machinery running efficiently): if the state's resources are, even only momentarily, in overabundance with respect to spending requirements, in the short term it makes more sense for the state (and even more so for the individual king) to abandon taxation. If the need arises for new expenditures, they can be dealt with through special one-off interventions (tributes, confiscations, extraordinary *ad hoc* extractions), especially if expenditures are discontinuous. Between the fifth and the seventh centuries, many post-Roman states experienced an evolution of this kind. It was, however, a near irreversible dynamic, because reactivating taxation takes more effort than maintaining it: even a brief interruption makes it hard, if not impossible – or at least too expensive – to get the mechanism going again.

So, to reverse the traditional narrative, the reduction of expenditures and of the functions of the post-Roman state was the cause of the end of taxation. This in turn is explained by the crisis of the social groups and functions that benefited particularly from the ancient system: first, the senatorial aristocracy, then the great cities and finally the bureaucracy and the professional army. Very important was also the desire of the barbarian *élites* to evolve from salaried war-specialists into possessors. So military spending, by now the largest and most continuous outlay the Romano-barbarian kings had to face, was replenished by land endowments to warriors, supplemented by gifts financed through booty, tribute and the king's "private" resources. The difficulty the new

18 Wickham, *Framing*, 80–124.

monarchies had in stabilising explains the readiness of kings eventually to renounce the tax extraction (in the absence of any cogent pressure on the expenditure side): an immediate political gain for a long-term loss.

5 Early and High Medieval States

5.1 *The Domain (or Feudal) State*

After Bloch there was not much debate over the financial workings of Feudal States or the potential variables in the mechanisms of how they funded themselves. The observation that fiscal circuits were of marginal importance or absent in the early and high Middle Ages had the result that scholars did not bother to look at other forms of extraction or circulation of resources by political powers and their impact on social and economic structures.

However, there is consensus on the fact that most post-Roman societies in the West were based on the possession of land by eminent groups (aristocracies and churches) and on centralised political institutions (States). Though they may have been simple and *ad hoc* when compared to Rome, forms of resource extraction did exist to finance monarchies and state spending policies. The necessary resources came first of all from landed properties which were sometimes endowed with a special juridical status; next, from the exercise of monopolies (e.g. mining rights); and finally from incomes connected to the protection of trade and the administration of justice. In addition, the monarchs imposed tribute on their neighbours (and sometimes even on their subjects), as did every other power, even informal ones.

These are the Feudal States of Bloch or the Domain States of the scholars of the New Fiscal History – although these models differ in some details. In this ideal-type there are no qualitative differences between kings and great landed proprietors in the extraction of resources and in expenditures. Another characteristic feature is the familiar "politics of land." In these societies characterised both by widely prevalent forms of peasant subjection (due to the connection between the possession of land and the rights of command) and by the political supremacy of a certain class of specialised warriors, land was the most precious form of wealth. Land not only guaranteed revenues, but above all it allowed armed retinues to be assembled, ensuring victory in social and political competition. Every grant of land, large or small, had a significance that went beyond the merely economic, and was enriched by an array of political and social meanings that might be more or less substantial. This structural fact assumes an even greater significance when we consider that the weakness of the monetary economy and the commercial network obliged

the state to compensate servants, loyal followers and "functionaries" with service tenures due to the impossibility of salary, that is payment in money for services.

This line of interpretation leads to a variety of comments. For example, the main features of this period (i.e. the localisation of power, the weakness and patrimonialisation of the state, as well as the absence of complex economic circuits), have often been accounted for with the all-purpose structural explanation that they were due to the "the impossibility of salary." But consideration of the priority of expenditure suggests a different explanation, one that insists on elements of the system's equilibrium. States in the early and high Middle Ages had a low level of spending and, hence, they played a limited economic role in extracting and redistributing resources.

What were their expenses? First of all war. But war was self-financed by militarised possessors and then by warrior aristocracies who provided for their own needs and equipment. The aristocracy, in particular, gladly accepted rewards in land, rather than in money, because they transferred political power along with economic resources. In addition to military expenses, there were also "status related expenses" (e.g. courts, palaces) including patronage over churches, which played a prominent role. These outlays were met through the granting of lands and fiscal assets (as well as the proceeds of patrimonial assets) or through the forced labour of subjects. But the major expenditures of the Roman world are missing from the picture: public works, bureaucracy, the army and imperial pomp. In any case, it was the transfer of resources to political *élites* (lay and ecclesiastical) for the purpose of obtaining support that represented the main expense for kings in the early and high Middle Ages, and to meet this expense they used land (the most sought after asset), but also offices (for individuals), immunity and grants of public rights (for churches). Furthermore, it has to be stressed that the expenses of Feudal States were also elastic: it was easy to renounce them if resources were reduced. In any case, there was no heading that required consistent outlays of money that would induce the political powers to look for extra financial resources beyond the typical ones of the Domain State.

It was the low level of spending and the equilibrium between expenses and resources (and not an all-encompassing structural explanation) that prevented the transition from the Feudal State to the Tax State. Two circumstances reveal the system's tendency to remain in equilibrium: the occasional reconstruction of taxation mechanisms was the result of external pressure; extraction systems that were devised to meet exogenous pressures or absorbed by conquest were soon abandoned (or radically transformed). We think, for example, of the taxes imposed in the late Carolingian Age in order to raise the money needed to pay

tribute to the Vikings and which disappeared when that threat had passed.[19] And we are also thinking of the gradual abandonment of taxation systems based on Arab models in Sicily and Spain. Later the need to hire groups of mercenaries had more lasting effects in pushing states back into taxation. However, even this was an elastic and discontinuous expense that arose at lengthy intervals.

The system's tendency toward equilibrium is confirmed by an apparently odd example, too. The feudal world did, in fact, have a form of extraction similar to the land tax in its regularity of collection, its direct relationship with production and its generalised imposition on the entire population, one that could be used to bestow revenues or pay wages. This was the tithe. Because of its nature as an ecclesiastical exaction, the tithe is almost never considered in analyses of taxation. But is this an adequate criterion? We do not believe it is. We are thinking of the great care the Carolingians took in instituting the tithe and in controlling its payment and also of the role of the tithe in bishops' spending policies (guided by the kings), in the restoration of ecclesiastical infrastructures, in the storage of agricultural produce and its response to food crises.[20] All these activities are the closest approximation we have to a state distribution of public goods during the early and high Middle Ages. The quasi-tax nature of the tithe is also apparent in its use as a means of remuneration of the "public" *milites*, either episcopal or comital. Finally, we have to consider the opportunities for enrichment that the spread of the tithe guaranteed to ecclesiastical and philo-Carolingian *élites* and the central importance of the struggles to control tithes that took place in the high Middle Ages, as well as the very large use of tithes in settling a revenue on followers and clients. From this perspective, the patrimonialisation and seigneurialisation of the tithe in post-Carolingian Europe are just another example of the many failures in taxation systems that occasionally emerged in a Feudal Society, which, because of low pressure on the expenditure side, had no real need of them.

All in all, the Domain State (a light state with occasional expenses) provoked a crisis among the groups that had most benefited from the Roman fiscal system: the foremost being the state bureaucracy and the aristocracies. The middle-men, who turned rents and land taxes into money and luxury goods sought after by the *élites*, disappeared, too. This is a phenomenon worth

19 Wickham, "Lineages," 30.

20 Two recent books provide a fine introduction to the tithe, see *La dîme dans l'Europe médiévale et moderne*, ed. R. Viader (Toulouse: PUM, 2010); and *La dime, l'église et la société féodale*, ed. M. Lauwers, Collections d'études médiévales de Nice, 12 (Turnhout: Brepols, 2012).

considering in explaining the collapse of commercial and financial players in the early Middle Ages.

5.2 *Lordships*

The Feudal State (or Domain State) is at the centre of discussions on medieval taxation. Lordship, on the other hand, is usually absent. And that is a pity because in the history of the funding of political activities seigneurial exactions represent an important break.[21]

In this field the specific cases are so numerous that generalisation is problematic. We will confine ourselves to a few remarks. First the chronology: understood in the wide sense as the power of a landlord, lordship is a phenomenon typical of the entire medieval period and part of the modern age. But except in England and a few other regions, it is possible to identify a limited phase (usually between the end of tenth and the end of the thirteenth centuries) during which lords developed new prerogatives. Thus there arose the *seigneurie banale* in France, the *signoria territoriale* in Italy and the *señorio jurisdiccional* in Castile, and so on. The development of seigneurial powers in the political, judicial and military fields characterises this phase: all public powers, including those of taxation that had previously belonged to kings, were seigneurialised.[22]

We can consider lordship as a completely localised way of regulating the transfer of resources from agricultural production to the political or military organisation. Wickham has, moreover, defined lordship as a "simple and local version of the state."[23] Wherever this lordship reached its highest degree of development, we can recognise a historical phase in which the funding of the institutions of power and war (outside the domain of the king) were not under the control of kings, princes or other supra-local powers. In view of the completely local character of political funding, this phase is different from

21 We point out that, despite the title, the three volumes of *L'impôt au Moyen Age: l'impôt public et le prélèvement seigneurial fin XII^e–début XVI^e siècle*, ed. P. Contamine, J. Kehervé and A. Rigaudiére (Paris: Comité pour l'Histoire Économique et Financière de la France, 2002), do not deal with lordship.

22 See S. Carocci, "I signori: il dibattito concettuale," in *Señores, siervos, vasallos en la Alta Edad Media* (Pamplona: XXVIII Semana de Estudios Medievales, 2002), 147–181; S. Carocci, "Signori e signorie," in *Storia d'Europa e del Mediterraneo*, VIII: *Il Medioevo* (*secoli V–XV*). *Popoli, poteri, dinamiche* (Rome: Salerno Editrice, 2006), 409–448; for different national studies about lordship and the ideal-types that they used.

23 C. Wickham, "La signoria rurale in Toscana," in *Strutture e trasformazioni della signoria rurale nei secoli X–XIII*, ed. G. Dilcher and C. Violante (Bologna: Il Mulino, 1996), 393.

the Carolingian or Romano-Barbarian past, and different from the late medieval state.

Of course, we are formulating an ideal-type: in historical reality many lords were obliged to take part in a number of supra-local activities and, for the most part, they were desirous of doing so in order to acquire prestige and new resources. But if we are interested in the processes of resource extraction, it is useful to distinguish between systems in which political and military activity are determined by a central power and systems in which all of that goes on at a local level. Relegating lordship to the world of private relationships, lumping seigneurial taxation together with land rent, makes no sense. It fails to take into account the fact that there were no qualitative differences between the budgets of kings and princes and the budgets of lords: they share the same base of patrimonial income (rent), and they share the same manner of supplementing this through *ad hoc* tributes and fiscal-like extractions, more or less structured, along seigneurial lines. Above all lumping lordship extraction and land-rent together prevents us from grasping the turning-point that lordship represented in the history of the relationship between politics and economics: lordship permitted political power to increase extraction again and to adapt it again to the wealth and productivity of those who had to pay.

In different ways all the lordships developed effective forms of surplus extraction. Some seigneurial dues were new: payments for protection, arbitrary *talliae, bovatica, jugatica* and many others. Other seigneurial exactions had a Carolingian or public origin: some *corvées*, tolls on ports and rivers, dues for the use of mills, profits of justice, hospitality for soldiers.[24] But even these latter rights were reconfigured by the lords, who did not limit themselves to appropriating them. These rights were not land-rent (i.e. exactions directly connected to the grant of lands): they concerned all the inhabitants of the lordship and at times they had a territorial character. On the whole they made possible a flexible extraction of resources, one that adapted to increases in agrarian productivity and pursued accumulations of wealth.

These circuits of extraction (localised but often comprising several scattered lordships) required managerial and economic operations that were not simple: extraction of resources, the possible commutation of burdens into

24 The most recent studies on seigneurial exactions are *Pour une anthropologie du prélèvement seigneurial dans les campagnes médiévales.* I. *Réalités et représentations paysannes* and II. *Les mots, les temps, les lieux*, ed. M. Bourin and P. Martinez Sopena (Paris: Publications de la Sorbonne, 2004, 2007); *Calculs et rationalités dans la seigneurie médiévale: les conversions de redevances entre XI^e^ et XV^e^ siècles*, ed. L. Feller (Paris: Publications de la Sorbonne, 2009).

money, the assessment of general tributes, the transport and redistribution of what had been collected, and so on. Many lords, particularly the most important ones, preferred monetary incomes, even more so if they were paid in advance, in place of land rents and seigneurial exactions collected on site. And so local intermediaries reappeared (seigneurial officials, money-lenders, small merchants) who were active in the extraction of resources, in making fluid the system and transforming the extractions into luxury items sought by the *élites*, through mechanisms analogous to so-called Portfolio Capitalism.[25]

So the structures of politics began again to pursue – systematically and efficaciously and not episodically and often superficially – wealth created by economic activity and they resumed their support for the processes of enrichment, which involved, besides the king and aristocrats, the intermediaries engaged in extraction. We can speak of a new connection between politics and surplus extraction, of the intensification of the economic meaning of fundamental political structures, of a more intrusive extraction.

Historiography in France has insisted on the positive effects that lordship had on the general economic dynamics. For Duby the expansion of the European economy has its precise origins in the *seigneurie* that obliged peasants to raise production and provided the aristocracies and their collaborators with the resources to increase demand for goods and artisanal products.[26] But let us leave aside the economic consequences of the change. What we need to insist on is the fact that the "seigneurial turning point" was passed on as an inheritance to the kings and princes. Even the first general taxes imposed on all subjects derive from seigneurial exactions. And even the first time a proportional tax is explicitly mentioned it is seigniorial, as is its legitimisation with the reference to Justinian's *Tres libri*.[27] A similar process also concerns the Italian communes, much of whose direct taxation in the countryside arose out of rights that had once belonged to the lords. This is above all clear for *collecte,*

25 This category, developed for modern India, has been properly applied to Roman world as well, cf. Bang, "Trade and Empire," 31–39.

26 G. Duby, *Guerriers et paysans. VII^e–XII^e siècle. Premier essor de l'économie européenne* (Paris: Gallimard, 1973).

27 A. Gouron, "L'"invention" de l'impôt proportionnel au Moyen Age," *Compte-rendue des séances de l'Académie des Inscriptions et Belles-Lettres* 138/1 (1994), 245–260 (who goes so far as to attribute to the jurists the "'invention' de l'impôt proportionnel au Moyen Âge"). With excessive emphasis on the decisive role played, in his opinion, by legal thinking in the change of tax systems, the article discusses a document of 1158 relating to the castle of Cailar, in Languedoc, where the lord, using technical expressions drawn precisely from the *Tres libri*, established sharing between the inhabitants the costs in *publicis operibus* based on an estimate of the real estate and movable wealth.

bovatica and other taxes, and also for requests for military aid, labour or victualling; the *fodrum*, on the other hand, was a tax that had royal origins, even if cities often inherited it directly from the lords who had appropriated it. Moreover, the royal fiscality also benefited from other aspects of the seigneurial inheritance such as the stimulus the lordships gave to the formation of cohesive and complex local communities: once passed under the dominion of the state, these community structures often acquitted very well the task of interior allocation of the taxes required by the state, which were better tolerated by the subjects because of the local nature of distribution and collection.

6 Plunder, Tribute and Protection: A Long-Term Constant

Within its fourfold classification of tax systems, New Fiscal History developed the ideal-type of the Tribute State which is characterised by the most rudimentary form of exaction and redistribution of resources: the model contains the most "primitive" political entities, which funded themselves primarily through plunder and/or making their neighbours pay tribute. However, there is no entirely effective and rigorous definition of the Tribute State, because it is an ideal-type where widely divergent historical realities (in our view too dissimilar to be associated with each other) are thrown together, such as the Roman fiscal system and the forms of exaction of the early and high Middle Ages that preceded the establishment of the Domain State.[28] The rest of the historiography has also dealt with plunder and tribute from very different angles, sometimes bending the terminology to suit different cases/models/contexts, thereby doing little to aid in understanding the debate and little for the reputation of the topic.[29] According to this ideal-type the Tribute State was destined to be left behind by the development of more stable and complex forms.

28 R. Bonney and W.M. Ormrod "Crisis, Revolutions and Self-Sustained Growth: Towards a Conceptual Model for Change in Fiscal History," in *Crisis*, ed. Ormrod, Bonney and Bonney 4–8 (Tribute State), 11 (Roman Empire), 12 (Carolingian Empire); less rigidly R. Bonney, "Introduction," in *Rise of the Fiscal State*, ed. Bonney, 7–9. In spite of everything, these very broad generalisations do not fit very well with the description of medieval taxation systems suggested by the same research team, see e.g. W.M. Ormrod and J. Barta, "The Feudal Structure and the Beginnings of State Finance," in *Economic Systems*, ed. Bonney 53–79.

29 John Haldon, in *State and Tributary Mode*, coined the term, *Tributary Mode of Production*, the system based on the extraction of surplus production through the state and its tax system, rather than through revenues, typical of ancient societies and later of the Byzantine world. This choice of terminology, far from helping to clarify the concept of Tribute State has led to increased confusion: Haldon's Tribute State is in fact more similar

This view does not appear to us to be entirely correct, because state funding based on plunder and tribute was a phenomenon that characterised the entire Middle Ages and even the Early Modern Age. Moreover, it needs to be emphasised that this occurred for a long time both internally (duties, excises; *corvées ad libitum*; raiding as a supporting social and economic structure, more than taxes, in the twelfth century even for the Italian communes) and externally (crusades, *Reconquista*, Norman expansion, piracy, etc.). The phenomenon does not only concern the most primitive or weakest states, but is one of the salient features of European expansion. In the case of the more complex states – for example, the Carolingian Empire, or high and late medieval Genoa, or some medieval monarchies such as those on the Iberian Peninsula – the resources generated by plunder and tribute supplemented the resources derived from landed income or taxes. This fact clearly distinguishes these states from other political structures that depended primarily – if not exclusively – on plunder and tribute, such as the Viking armies, the Golden Horde and early Islam. These additional resources were crucial. It is the very importance of plunder and tribute that explains the oscillation that existed, in spite of the tendency of the Domain or Feudal State to equilibrium, between strong states and weak ones (here let us stress the word *oscillation* and not *evolution*). The plunder and tribute model also clarifies how the process of strengthening the aristocracies began, and the rise of their local hegemonies.

Let us try to clarify these assertions. The idea that plunder and tribute were an important if not decisive component of state resources during the early and high Middle Ages does not emerge in the analyses that most directly concern the forms of state funding. But other studies provide good examples. We start with T. Reuter, who suggested that plunder and tribute were the foundation of the Carolingian monarchy: they enriched it and fed the cycle of redistribution to aristocrats and warriors, which guaranteed their loyalty and activated the formidable Frankish war machine. The end of the Carolingian expansive capacity is the first cause of the crisis of the Empire. M. McCormick lays a similar emphasis on the slave trade and more generally on co-ordinated state

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to the Tax State than the Tribute State of New Fiscal History. Wickham's taxonomy of types of revenue (and indirectly of types of state) is more useful; it describes much more narrowly and pertinently the *ad hoc* tributes that funded several early and high medieval states as being the simplest form of state financing, the first development to come after simple plunder (from which he clearly distinguishes them). They were characteristic (but not exclusively so) of several early medieval states and of the simplest political entities of the high Middle Ages. Irregularity of collection and a low level of pervasiveness (i.e. a lower capacity to siphon resources than that of fiscal systems) made it the least efficient of the forms of state funding found in the Middle Ages – see Wickham, "Lineages," 26–27.

predation as motors for the Carolingian take-off, even if his argument is deployed on the level of economic history.[30]

A comparable narrative appears to us to be implicit in the model of European expansion in the high Middle Ages proposed by scholars like R. Bartlett, although in this case the narrative is elucidated differently and linked to several collection centres of tribute and booty and more than one distributive network.[31] And one could add that during the same period considered by Bartlett the tribute and plunder model was applied not just externally but also internally to the ex-Frankish world: we can read seigneurial society and the funding mechanisms of the lordships in this way. At times for the lords (of various statures including princes and kings) plunder and tributes are a point of departure, one that could be gradually left behind by the "fiscalisation" of exactions (*franchises*, lump payments, the contracting out of *talliae* and tolls; poll taxes and hearth taxes).

Within these interpretative models plunder and tribute feed the capacity for royal and aristocratic spending on military activity, with an increase in the number of forces and an improvement in weapons; they increase prestige expenditures in the fields of culture, architecture and religion; they permit a high level of remuneration for military entourages and loyal aristocracies along with their military leaders, ensuring that the latter have the necessary political strength to acquire new booty and/or conquests. And so the cycle starts over again. To make the system work requires continuous expansion, outwardly or inwardly.

These significant lines of interpretation have left no trace in reflections on the forms of medieval state funding, nor have they led to a different taxonomy or even a more nuanced understanding of the existing models. It is likely that the more blatantly violent and archaic (if not primitive) flavour of these forms of exaction have made them hard to digest for historiographical operations – such as New Fiscal History – which continue to remain solidly anchored to an evolutionary model intended to show the emergence of western modernity. From this perspective tribute and plunder could not be included in the Grand

30 T. Reuter, "Plunder and Tribute in Carolingian Empire," *Transactions of the Royal Historical Society* 5th ser. 35 (1985), 75–94; T. Reuter, "The End of Carolingian Military Expansion," in *Charlemagne's Heir. New Perspectives on the Reign of Louis the Pious* (*814–840*), ed. P. Godman (Oxford: Clarendon Press, 1990), 391–405; M. McCormick, *Origins of the European Economy. Communications and Commerce, AD 300–900* (Cambridge: Cambridge University Press, 2001), 733–777.

31 R. Bartlett, *The Making of Europe. Conquest, Colonization and Cultural Change, 950–1350* (Princeton: Princeton University Press, 1994): cf. Duby, *Guerriers et paysans*.

Narrative recounting the formation of Modern Europe, except as residual phenomena, as vestiges of a past to be overcome.

It was precisely for these ideological reasons that historians of the state and taxation failed to take into account the conceptual models developed by economic history which might get past this dichotomy since they include both taxes and tribute (and plunder too) under a single category. So we can try to relativise the opposition between taxes on the one hand, and plunder and tribute on the other, practices which historians of taxation have all too often viewed as absolute and mutually exclusive (although obviously we are not proposing a new ideal-type of state funding!).

We are thinking of notion of "Protection Costs," first developed by F.C. Lane and then taken up effectively by P. Bang in an essay on the Roman economy.[32] According to this interpretation, we can consider every exaction collected by political entities as the price economic operators paid for the protection and security of their productive and commercial activities. It was unimportant to them whether they paid for protection in the form of tribute or taxes. What mattered was its efficiency. In this respect in the medieval West, unlike in late Antiquity, no "operator" imposed a monopoly in delivering that service; instead, the "sale of protection" occurred in a regime of stiff competition between different lords. According to the interpretations expressed in Lane's seminal essays, the concentration in few hands of military power (and hence of protection services for economic operators) led to a reduction of Protection Costs during the late Middle Ages and Early Modern Age.

Lane's model of Protection Costs is an important one, but its direct relationship between the size of a state and the effectiveness of its protection services needs to be corrected. Lane suggests that larger states operated better as sellers of protection, by reducing prices and improving service. But while this may be the case in the large operations of Mediterranean or Atlantic trade he studied,[33] it does not necessarily hold true for smaller economic circuits. A. Greif

32 F.C. Lane, "Economic Consequences of Organized Violence," *Journal of Economic History* 18 (1958), 401–417; F.C. Lane, *Profits from Power: Readings in Protection Rent and Violence-Controlling Enterprises* (Albany, NY: State University of New York Press, 1979); Bang, "Trade and Empire," 39–41.

33 In any event, the example used by M. Kaplan, *Les hommes et la terre à Byzance du VI^e^ au XI^e^ siècle* (Paris: Publications de la Sorbonne, 1992), 172–174, of *potentes*, who were paid for private military *patrocinium* under Justinian, as well as similar cases of the insistence on the limits of the *pax romana* that P. Bang, "Trade and Empire," 48–49, draws attention to, remind us that large states can also be inefficient. In fact, these examples show that there were two different levels of "Protection Costs" in the Late Roman Empire. First the State, paid by taxes, in its role of monopolist; secondly, private "extra-legal" forms of local

has already shown that in specific contexts (such as the long-distance trade of Italian communes in the late Middle Ages), small states were also able to optimise Protection Costs and guarantee efficient service at an acceptable price. According to Greif the long-distance trade of the Italians was able to expand because the cities presented themselves to the external world as a kind of collective mercantile guild that could protect merchants just as a large state did, and thereby reduce Protection Costs.[34]

One can make a similar argument for the case of the *seigneuries* during the high Middle Ages, expanding on Greif's thesis to the point where we might hypothesise that – in specific contexts and under certain economic conditions – numerous small-sized political players could be in a position to offer efficient protection at a reduced price.[35] We are thinking of small-scale production and exchange circuits such as those typical of the European countryside in the twelfth and thirteenth centuries. These were contexts in which the economy was fuelled by agricultural production, simple forms of artisanship and local exchanges, in other words the society that characterised the first phase of growth in a large part of Europe during the high Middle Ages. Obviously, we have in mind examples borrowed from our own field of research, that is to say Tuscany and Latium, especially in the twelfth and thirteenth centuries, but we think this discourse could be extended further afield. The services requested by these local economic operators (peasants and village artisans, small merchants and money-lenders) concerned the maintenance of basic infrastructure (roads and bridges; docks and markets), security for workers and intermediaries, forms of policing for the countryside and markets, inspection of standard measures. In this context, smaller polities like lordships might be more efficient than larger states because of the stiff competition between them. Indeed, economic players might sometimes choose – and they

protection, which were the result of the monopoly holder's inefficiency and necessitated another layer of Protection Costs. The situation is reminiscent of the state of affairs in large parts of Southern Italy today: economic players pay (or at least ought to pay) taxes to the state, which is not able to protect them. So they have to pay the *Mafia* or *Camorra* again for the same service. And they are often happy to pay for good service. The Late Roman Empire was an inefficient monopolist, offering a poor protection services, compared to the huge level of taxation it demanded. Like many other monopolists, the Late Roman Empire sold shoddy service at an exorbitant price.

34 A. Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (New York: Cambridge University Press, 2006).

35 Moreover, Bang, "Trade and Empire," 40, suggests that the number of states that offered protection in the modern age, compared with the role of the Roman state monopoly, granted a service improvement, parallel to the lowering costs.

did choose – between different lords to be protected by. On some occasions they might even choose from which lord to buy military protection, from which lord to buy free and protected access to market, and so on. And they could buy different services from different lords, too.[36] The high number of operators in the protection market, in stiff competition with each other, may have improved the performance of the system and may have lowered total Protection Costs.[37]

7 The Late Medieval Tax State

For the late medieval period and the Early Modern Age the theme of fiscality has received a good deal of attention because it is at the centre of studies on the origins of the Modern State. This is true both for French and Iberian research on the relationship between the city and the state and, above all, for the New Fiscal History, which gives a great deal of importance to the transition from Domain State to Tax State.[38] It is an epochal transition, also called the

36 Thus, the picture we are drawing here is different from the "Schutz und Schirm" (protection and defence) of O. Brunner, *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Südostdeutschlands im Mittelalter* (Vienna: R.M. Rohrer, 1939; new ed. 1965); English trans. *Land and Lordship. Structures of Governance in Medieval Austria* (Philadelphia: University of Pennsylvania Press, 1995). According to him, the essence of the seigneurial relationship is to be found in the peaceful acceptance of the lord's power, legitimised by his role as protector. However, our interpretation is also different from the revision of Brunner's model proposed by G. Algazi, *Herrengewalt und Gewalt der Herren im späten Mittelalter. Herrschaft, Gegenseitigkeit und Sprachgebrauch* (Frankfurt-am-Main: Campus Verlag, 1996), who held that seigneurial violence was practised primarily to the detriment of the peasant world and to the advantage of the class dominance of the lords.

37 We do not hold as conclusive the potential objection that the number of *seigneurs* and their high rate of conflict should have led to higher Protection Costs, both direct (military spending) and indirect (plunder and damage). Elevated levels of conflict and destruction were, in fact, typical of acute phases of strife, such as during the early phases of the imposition of the lordship, and they should not be generalised. In the seigneurial world, as is known, violence was subject to forms of self-regulation and self-limitation which attenuated its negative effects. Nor were phases of intense conflict, which brought with them enormous costs and very serious damages to the productive system, an exclusive attribute of the seigneurial world: one need only call to mind the wars between the Italian communes in the 13th and 14th centuries, or those between the great European monarchies in the late Middle Ages.

38 For the studies on the relationship between the city and the state: *Actes*, ed. Sánchez and Furió; *La fiscalité des villes au Moyen Age*, ed. D. Menjot and M. Sanchez 4 vols (Toulouse: Éd. Privat, 1996–2004); *L'impôt dans les villes de l'Occident méditerranéen, XIII^e–XV^e siècle*,

Fiscal Revolution, which according to Bonney "in fiscal history is equivalent to the transition from feudalism to capitalism for economic history in general."[39]

The theories of the New Fiscal History are complicated and we must say not always useful. In addition, some specialists on taxation in the late Middle Ages remain partly prisoners of an unjustified teleology. The effort of extracting resources on the part of the state is held to be a natural and expansive tendency that leads to the birth of the Modern State.[40] The essential feature of the so-called Fiscal Revolution is the development of a complex fiscality, expressed on several levels and organised in a system of taxes that attempts to reach the wealth of subjects down to a level of great detail. Exactions become regular; they are extended to a large number of subjects and subject institutions; they are presented as obligatory contributions, not needing always to be renegotiated; finally, they are not destined for a precise purpose (such as the maintenance of a bridge), but they flow together in a budget, which serves for diverse expenditures in the collective interest. In addition, a cascading process is set off. Under the pressure of the royal taxation, all the subjects of the state, in particular the cities, are on the one hand driven to consolidate their internal institutions and mechanisms for exaction and redistribution; on the other hand, they gain space in the representative institutions and aid in the creation of the contractual state.

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ed. D. Menjot, A. Rigaudière and M. Sánchez (Colloque de Bercy 2001) (Paris: C.H.E.E.F.F., 2005); *Fiscalidad de Estado y fiscalidad municipal,* ed. D. Menjot and M. Sánchez (Madrid: Casa de Velázquez, 2006). For the New Fiscal History, above all see the three collective volumes *Economic Systems*, ed. Bonney; *Rise of the Fiscal State*, ed. Bonney; *Crisis*, ed. Ormrod, Bonney & Bonney.

39 R. Bonney, "Introduction," in *Economic Systems*, ed. Bonney, 13.

40 From among the countless studies on the origins of the modern state, we will only refer the reader to the volumes edited by Jean-Philippe Genet: *L'Etat moderne, genèse: bilans et perspectives,* ed. J.-P. Genet (Paris: Editions du Centre national de la recherche scientifique, 1990); *L'Etat moderne et les élites, XIII^e–XVIII^e sècles: apports et limites de la méthode prosopographique*, ed. J.-P. Genet and G. Lottes (Paris: Publications de la Sorbonne, 1996); *Visions sur le développement des états européens: théories et historiographies de l'état moderne*, ed. W. Blockmans and J.-P. Genet (Rome: EFR, 1993); for taxation especially *Genèse de l'État moderne. Prélèvement et redistribution*, ed. J.-P. Genet and M. Le Mené (Paris: CNRS, 1987); equally obvious is reference to the volumes published in the *Origins of the Modern State in Europe* series, that arise from an important international research program: in addition to *Economic Systems*, ed. Bonney, see also *Power Elites and State Building*, ed. W. Reinhard (Oxford, New York: Oxford University Press, 1996); *War and Competition between States*, ed. P. Contamine (New York: Oxford University Press, 2000); *Resistance, Representation, and Community*, ed. P. Blickle (Oxford: Oxford University Press, 1997).

The fiscal change is, therefore, the heart of the process of state-building, of the origin of the Modern State, in terms of developing administrative apparatus, institutions, legal procedures, and representative organs, such as Parliaments and Courts, which are destined in certain kingdoms to obtain the management of taxes and decide on the allocation of revenues. Tax resources are at the centre of a *ménage à trois*, together with war and the growth of the state. War is considered the primary engine of state development and this through fiscality: the increase in the cost of war due to mercenaries and new techniques of warfare is added to the increased expenses involved in controlling the territory better and more closely than ever before. Thus, the money that is gathered together through taxes becomes the determining factor in politico-military competition. Control of private and public wealth is the beating heart of war and of the state.[41]

Various studies in sociological history – such as those by Charles Tilly – are linked with this position, considering fiscal-military state and military organisation to be selection criteria among the states of Europe.[42] Those states prevail that are better able to organise themselves to sustain a war effort, by developing fiscal systems in which rulers could mobilise resources, but still sustain economic productivity. These analyses should be discussed,[43] in order also to point out their teleological character (sometimes that dangerous form of teleology that aims to explain why *we* are superior) and to stress that other important factors also contributed to the strength of a state, like ideology and the capacity to hegemonise and integrate local *élites*. But here we only want to deal with the specifically fiscal aspects of the transition from Domain State to Tax State.

In effect, the interpretation developed by this scholarship is now widely accepted. But it is worth pointing out some of its problematic aspects.[44] An initial problem is its simplification of more complex processes of evolution and, in particular, the fact that it takes as models what are exceptional cases. In Italy, for example, the model of communal taxation is built up on the cases of Florence, Venice, Genoa and Siena. At the heart of the model is the idea that in

41 For the "beating heart": M. Ginatempo, "Esisteva una fiscalità a finanziamento delle guerre del primo '200?" in *1212–1214: el trienio que hizo a Europa* (Actas de la XXXVII Semana de Estudios medievales de Estella, 2011), 342.

42 *The Formation of National States in Western Europe*, ed. C. Tilly (Princeton: Princeton University Press, 1975); C. Tilly, *Coercion, Capital, and European States, AD 990–1990* (Cambridge, MA: Blackwell, 1990).

43 E.g. J. Haldon, "Introduction," in *The Byzantine and Early Islamic Near East*, III, *States, Resources and Armies*, ed. A. Cameron (Princeton: Darwin Press, 1995), 1–25.

44 An excellent critical analysis is Ginatempo, "Esisteva una fiscalità."

the thirteenth century there existed a radical and ideological rejection of direct taxation on citizens and that a system of deficit spending prevailed, financed with loans guaranteed by indirect taxes on citizens and direct taxes on peasants. All this is supposed to have evolved during the course of the fourteenth century into a system of consolidated public debt, similar to the kind that in Renaissance Florence made the fortunes of Matteo Palmieri.

This model, based on deficit spending and later on consolidated public debt, however, only developed in a few large cities. In reality, fiscality in the other Italian communes was different.[45] From the ideological standpoint, it is true that citizens everywhere preferred indirect taxation and, above all, extraordinary taxes. These taxes were considered the symbol of freedom, the aid, as it were, that a member of a political society offers when it is needed. Naturally, extraordinary taxes, like every kind of tax, were contested, even bitterly so: but it was only in the fourteenth century that the idea (up to then existing only in legal theory) became general that direct and ordinary taxation was something dishonourable, a sign of dependence and subjection. The fact is that during the thirteenth century direct taxes were collected not only from peasants, but also from citizens. Until the late thirteenth century indirect taxes remained of little importance. Passing to public debt, we must stress that this only developed in the few large cities that remained "republics" and which created their own regional state. Deficit spending is absent from the cities that fell under the domination of a larger city or in the larger cities themselves (like Milan) that were ruled by *Signori*, for whom public debt was prevented by problems of consensus and the scanty cohesion in the political society.[46]

Another limit of these studies is their tendency to anticipate the birth of the Tax State. Somewhat obsessively they start out from the end of the Middle Ages and search the twelfth and thirteenth centuries for signs of a return to taxes. But as always an obsession with origins leads to misunderstandings. There is consensus on the fact that before 1150 in the Christian West taxes were present only in England, in the form of a land tax that dated back to the Anglo-Saxon kings, the *Danegeld*. More open to criticism is the idea that taxes

45 For the centuries before 1350 the best studies are M. Ginatempo, *Prima del debito. Finanziamento della spesa pubblica e gestione del deficit nelle maggiori città-stato toscane fino all'istituzione dei Monti* (Florence: Olschki, 2000); and Ginatempo, "Esisteva una fiscalità," 316–322.

46 G. Chittolini, "Di alcuni aspetti della crisi dello stato sforzesco," in *Milano e Borgogna. Due stati principeschi a confronto fra Medioevo e Rinascimento* (Rome: Bulzoni, 1990), 21–34, for the duchy of Milan; and M. Ginatempo, "Spunti comparativi sulle trasformazioni della fiscalità nell'Italia post-comunale," in *Politiche finanziarie e fiscali nell'Italia settentrionale* (*secoli XIII–XV*), ed. P. Mainoni (Milan: Unicopli, 2001), 139–140.

reappeared in numerous European kingdoms in the second half of the twelfth century. This idea is based on the extraordinary exactions requested for the crusades, or in other exceptional cases, in the entire kingdom and not only in the domains directly ruled by the sovereign. In England a percentage on movables was taken in 1166, 1188, and also in 1194 to ransom King Richard I; in Catalonia, King Alfonso II requested the *bovtage* tax in 1173.[47] The New Fiscal History makes much of these extraordinary exactions, which it believes to be the first manifestation of a return to state fiscality in the West. And certainly, these taxes were a very new development. They were the first attempt to extend exactions from the sovereign's "old" territories where his power had been established for some time, to the "new" territories or those of indirect dominion. They gave work to jurists to find, on the one hand, a legitimation for this new type of exaction, and on the other, the theoretical armament that subjects needed to resist these new developments (so the theory was developed of the contractual or voluntary character of these payments).[48] Besides this, some of the taxes of the late Middle Ages have the same name as these extraordinary exactions and so they appear to have arisen from them.

This perspective is, however, weakened by the teleological approach. Because of their general and systematic character these exactions may be included under Wickham's ideal-type of "tax." But they lack one fundamental characteristic of taxes in the model of the Tax State, that is, regularity. They always remained extraordinary until the end of the thirteenth century and were requested at intervals of many years and to finance crusades and other unforeseen circumstances and not ordinary military activity.[49] The same holds true for indirect exactions, for which there is clear evidence only from the late thirteenth century, with the exception perhaps of Castile under Alfonso X and

47 Wickham, "Lineages," 32; M. Sánchez, *El naixement de la fiscalitat d'Estat a Catalunya (segles XII–XIV)* (Girona: Eumo, 1995), 29–45; Ginatempo, "Esisteva una fiscalità," 302–338.

48 In general, see E. Isenmann, "Medieval and Renaissance Theories of State Finance," in *Economic Systems*, ed. Bonney, 21–52. An excellent analysis of a late 12th- early 13th-century jurist's thoughts on taxation is S. Menzinger, "Verso la costruzione di un diritto pubblico cittadino," in *La Summa Trium Librorum di Rolando da Lucca (1195–1234). Fisco, politica, scientia iuris*, ed. E. Conte and S. Menzinger (Ricerche dell'Istituto Storico Germanico di Roma, 8) (Rome: Viella, 2012), CXXV–CCXVII; for the kingdom of France see L. Scordia, *'Le roi doit vivre du sien'. La théorie de l'impôt en France (XIII^e–XV^e siècles)* (Paris: Institut d'Études Augustiniennes, 2005).

49 Among the criticisms that have already been levelled against this interpretation, we mention only G. Lewis, "'Fiscal States': Taxes, War, Privilege and the Emergence of the European 'Nation State', *c.* 1200–1800," *French History* 15 (2001), 51–63; and especially Ginatempo, "Esisteva una fiscalità."

the kingdom of Sicily under Frederick II (with Norman Sicily all cases that also involve the highly debated question of the Muslim legacy). In state budgets, even in England, taxes only become regular later on, between the end of the thirteenth and the beginning of the fourteenth centuries. Consequently, it would appear that we cannot speak of a Fiscal Revolution even in cases where the sovereign had reasonable levels of income at his disposal, such as Philip Augustus in the Paris region by 1202–1203.[50] The situation in some cities is somewhat different, above all in Italy. Autonomous and endowed with well-established institutions, by the end of the twelfth century the Italian communes had the full right to impose taxes, and they carried out detailed assessments of the wealth of their citizens and inhabitants of their territories. But with the exception of the maritime powers (Venice and Genoa) which bore the exorbitant costs of wars at sea, the budgets of the city-states were modest and their fiscal systems simple. Even the registries of the *libre* and other estimates made by the Italian communes, which have so impressed historians, were used for the purpose of extraordinary taxes and not for ordinary taxation.[51]

We can explain this long-lasting irregular character of exactions and the simplicity of many budgets by the fact that the costs of war remained by and large limited. Certainly the practice of hiring mercenaries existed and often nobles also received payments for their armed service. In addition, expenses were sometimes incurred for the supply of troops or for siege engines. But all in all these expenses had a limited role, because most combatants participated in wars out of feudal duty or desire for plunder or ideological reasons, and war remained a remunerative and "self-funding" activity. The nexus war-fiscality-state growth had not yet formed. It becomes established in the last decades of

50 J.W. Baldwin, *The Government of Philip Augustus. Foundations of French Royal Power in the Middle Ages* (Berkeley: University of California Press, 1986), 137–175. Even for the English monarchy, usually considered the most advanced and "fiscalised" of the medieval West, the data arising from the Pipe Rolls, rather than prescriptive sources (such as Domesday Book), shows a picture closer to the rest of contemporary Europe, rather than to the post-Fiscal Revolution: in 1129–1130, for example, the geld produced only one-tenth of the total income of £24,000, while the revenues of royal estates contributed half; see R.H. Britnell, *The Commercialisation of English Society, 1000–1500* (Cambridge: Cambridge University Press, 1996), 39.

51 Here we are in line with the interpretation of P. Cammarosano, "Le origini della fiscalità pubblica delle città italiane," in *La gènesi de la fiscalitat municipal* (*segles XII–XIV*), ed. A. Furió, *Revista d'Història Medieval* 7 (1996), 39–52; and Ginatempo, "Esisteva una fiscalità," 318–322, in clear disagreement with other interpretations like P. Mainoni, "A proposito della rivoluzione fiscale nell'Italia settentrionale (XII secolo)," *Studi Storici* 44 (2003), 5–42.

the thirteenth and the first decades of the fourteenth centuries – at different times depending on the region, but still quite close together.

We cannot carry on the investigation in the second half of the fourteenth and in the fifteenth centuries, to follow the development of fiscal systems that were ever more complex and diversified. To conclude, it is more helpful instead to confine ourselves to a few remarks on the effects of the taxes.

The return to taxes had great consequences. In terms of how the power of the state was perceived, taxes, for example, stimulated the development of a clearer differentiation between public and private, or rather, a specific perception of state power as something different from other kinds of power (although we lack adequate research on the topic). Important (and much more studied) also was the impact that the growth of fiscality had on the economy. Among historians of the late Middle Ages pessimistic views prevailed for a long time, insisting on the destruction of resources and the destructurisation of productive activities as a result of excessive fiscal pressure and war. Now more nuanced opinions are gaining ground that look into the role of stimulus that fiscality performs, on its capacity to break pre-existing socio-institutional blocks, to promote commercialisation, and to improve productivity.[52]

The New Fiscal History insists a great deal on the changes that taxes brought about in state institutions and on their social consequences. And in effect the control of tax assessment and collection by communities allowed local *élites* to benefit from state fiscality. In the Kingdom of Valencia and Catalonia farming out the collection of royal and municipal taxes allowed the numerous local *élites* (as much as one fifth of the population!) to appropriate for themselves a high proportion of the value of the taxes, from 50% up to 75%.[53] Thanks to practices like tax-exemption, tax-evasion and tax-farming the *élites* also obtained political advantages. They increased their local power by offering protection to their neighbours, who thus became their clients (just as was common in the Later Roman Empire). Normally seen as a sign of a weak state,

52 Guy Bois is a good example of this change in perspective: compare G. Bois, *Crise du féodalisme. Economie rurale et démographie en Normandie orientale du début du 14e siècle au milieu du 16e siècle* (Paris: Presses de la Fondation Nationale de Sciences Politiques, 1976); and G. Bois, "Fiscalité et développement économique à la fin du Moyen Âge," in *Actes*, ed. Sánchez and Furió, 337–347.

53 A.J. Mira Jódar, "Administrar los drets al senyor rey pertanyents. La gestión de la fiscalidad real en el País Valenciano en la Baja Edad Media," in *Actes*, ed. Sánchez and Furió, 549–550; P. Benito Monclús, "Los beneficiarios del impuesto en la Corona de Aragó. Élites urbanas y rurales" in *La conjoncture de 1300 en Méditerranée occidentale*, 11–111. *Échanges, prélèvements et consommation dans le monde rural*, ed. M. Bourin, F. Menant and L. Figueras (Collection de l'École française de Rome 490. Rome: École française de Rome, 2014), 637–653.

this dialectic was often useful for state power and revenues: in effect tax-farming (and tax-evasion) can also be seen as the price the centralised states had to pay for increasing fiscal extractions, by allowing some allied local groups a greater share of the surplus to the loss of other sections of society. More generally, "simply by coopting local *élites*, [...] fiscality became not simply the resource for state-building, or the excuse for the local imposition of state domination, but a means, paradoxically, for creating a local acceptance of state hegemony."[54]

To emphasise the point that the nobility's alliance with the state provided it with new ways of appropriating peasant surpluses that were based on taxes and not on rents, Marxist historiography has developed the model of "centralised feudal rent." G. Bois speaks of *féodalisme centralisé* and *réproduction élargie du pouvoir seigneurial*, and J.-P. Genet of *féodalisme d'État.*[55] While this approach has been criticised by the New Fiscal History, its arguments are substantially the same. Ormrod for example writes: "The general effect of royal fiscal systems in the later Middle Ages seems to have been the withdrawal of resources from the lower end of the socio-economic scale and their redistribution among the higher levels of society: to express it at its most basic, taxes paid by peasants found their way directly into the pockets of nobles and knights in the form of war wages, fief rents, salaries, perquisites of office and a host of other payments."[56]

At this point we are back to where we started, the social effects of the burdensome redistribution of resources performed, either directly or indirectly, by the fiscal systems of the tax states. But as we have seen, the transfer of resources from producers to the hegemonic classes is a long-term constant among the various forms that the funding of politics took. What was new about the end of the Middle Ages was rather the quantity of the resources transferred. Very high quantities became normal, similar to the levels reached in the early and high Middle Ages only by the most successful "plunder and tribute" states. In addition, intense and pervasive extraction and the growing role of

54 Wickham, "Lineages," 42.

55 The model was proposed by Bois in his classic essay "Noblesse et crise des revenus seigneuriaux en France au XIV^e^ et XV^e^ siècles: essai d'interpretation," in *La noblesse au moyen age, XI^e^–XV^e^ siècles. Essais à la mémoire de Robert Boutruche*, ed. P. Contamine (Paris: PUF, 1976), 219–233, and has been taken up a number of times since then; see most recently J. Morsel, *L'aristocratie médiévale. La dominations sociale en Occident* (*V^e^–XV^e^ siècles*) (Paris: A. Colin, 2004), 279–295.

56 W.M. Ormrod, "The West European Monarchies in the Later Middle Ages," in *Economic Systems*, ed. Bonney, 158.

intermediaries, two typical features of the *seigneuries*, were now deployed over socially and geographically much wider circuits.

Out of this arose a new social and economic dialectic. Wickham has maintained that it was only after 1300 or so that the aristocrats, formerly the prime movers of economic change, ceded this role to the state.[57] The new centrality of the state is well reflected in the mechanisms of social mobility. In the eleventh and even more the twelfth centuries, opportunities for enrichment and social ascent depended first and foremost on economic activities both of production and intermediation. But after 1300 or so, a clear change occurred: economic factors gave way to the new and unprecedented importance of political conditions. Everywhere, or almost everywhere, economic factors continued to count for a great deal, but public institutions became the main vehicle for upward mobility.[58]

8 Conclusion

This survey of the categories that historians of the western Middle Ages have developed to interpret political and state funding (and their political, economic and social impact) is mainly intended to help us make comparisons. One of the most obvious conclusions of the present paper is the invitation to discuss whether, and to what extent, the western models of the relationship between politics and resources are also applicable to the Byzantine or Islamic areas. There existed processes in the Byzantine and Islamic worlds that only partly corresponded to the transformations that we have just tried to describe for the Christian West.

But to conclude, we would like to return to a number of critical points we have highlighted, though the reader should be aware that it is not our intention here to come up with new interpretational categories. The first point is the tendency of the research to insist much more on the forms of exaction carried out by political structures than on social and economic consequences. No doubt, the state models developed by New Fiscal History are all inclusive. They contain every type of parameter, such as ideology, fiscal theory, the forms of local and central government, political economy, and social consequences.

57 C. Wickham, "Conclusions," in *Rodney Hilton's Middle Ages 400–1600. An Exploration of Historical Themes*, ed. C. Dyer, P. Coss and C. Wickham, *Past and Present* 195, suppl. 2 (2007), 314.

58 *La mobilità sociale nel medioevo* ed. S. Carocci (Collection de l'École française de Rome 436) (Rome: École française de Rome, 2010).

But it is the form under which resources were exacted that always remains the focus of New Fiscal History's definitions (as well as the parameters that lend their names to its different models of states). The reasons for this choice are quite understandable, since for the states of the Middle Ages and the Early Modern Age it is much easier to know their forms of exaction than the structure of their expenses. Wickham is pragmatic about acknowledging this constraint, the result of the state of the sources (and studies); accordingly, he bases his typologies on the forms of exaction. However, it is well worth emphasising that a fiscal and financial mechanism is defined primarily by how money is spent and to a lesser degree by how it is exacted. This point may be clearly seen from the fact that all the different exaction models we have examined had a common feature: resources were transferred upwards, from producers to the hegemonic classes. But this is only one aspect, however important, of the complex circulation of resources that was set into motion by the funding of politics: circulation of money, goods, labour, but also of cultural resources, forms of protecting economic activity, of supporting social identities.

The reversal of roles between exaction and expenditure is another important point. Today, most historians believe that it was the need to spend that determined the intensity of exaction and not the other way round. This is true of the Feudal State as well. The main features of this period have often been accounted for by the "the impossibility of salary." But a different explanation, based on the system's equilibrium, is possible. The low level of spending and the equilibrium between expenses and resources prevented the transition to the Tax State. Occasional new taxation systems, which had arisen from external pressure or had been absorbed by conquest, were soon abandoned or transformed. The tithe is a fine example of the failures of taxation systems that emerged in "feudal society" because of low pressure on the expenditure side. The tithe was in fact the form of extraction most similar to the land tax in its regularity of collection, its direct relationship with production and its generalised imposition on the entire population. But it was soon patrimonialised and seigneurialised.

Lordship is another critical point. Though seigneurial exactions represent an important break, discussions on medieval taxation usually ignore lordship. Lumping all seigneurial exactions under the single category of rent effectively obscures the fact that there was no qualitative difference between the budgets of kings and princes and the budgets of lords. Lordship, indeed, was a localised way of transferring resources from production to politics and war. The forms that this transfer assumed were new and constituted a turning point in the relationship between politics and economics: lordship permitted political power to increase extraction and to adapt it to wealth and productivity.

These localised circuits of extraction and redistribution, activitated by lordship, necessitated the performance of managerial and economic operations, which enriched the intermediaries who engaged in them. The result was a new and more pervasive interaction between exactions and politics which led to a growth in the role that political structures played in fundamental social and economic dynamics. Moreover, the development of lordship and its forms of exaction stimulated the establishment of more complex and cohesive local communities. Precisely because of the contiguity that existed between "public powers" and the lords, the new features that characterised the relationship between economy and politics that had arisen at the "seigneurial turning point" did not disappear when kings and princes began developing new forms of taxation. The Tax State inherited and developed many innovations that lordship had actually introduced into the relationships between politics and exaction. Based on these considerations we need to reconsider in part the idea that the birth of the Tax State was an absolute novelty, a veritable Fiscal Revolution, as historians have viewed it.

Another debatable point is the place assigned to tribute and plunder in the historiographical models we have been examining. Although New Fiscal History relegates them to the most primitive and inefficient forms of exaction, tribute and plunder were a long-lasting phenomenon that characterised Europe of the Middle Ages and the Early Modern Age. In spite of being violent, less efficient and less pervasive than seigneurial exactions or taxation, they mobilised significant resources in terms of quantity and quality. The presence of tribute and plunder can also explain both the oscillations of power in Feudal States and the success of political entities that in later centuries had access to them. Moreover, a category developed by economic historians, like Protection Costs, can help us understand the limited usefulness of the opposition between taxes and tribute. The first thing that economic operators asked of the state was to provide protection and then to regulate exchanges: whether they paid for this service in the form of a tax, a seigneurial exaction or as tribute was of secondary importance. What counted most was the efficiency of the service and its price.

More generally speaking, the theories of New Fiscal History suffer from a questionable teleology. In framing the birth of the Modern State, the tendency for states to want to maximise the extraction of resources is taken for granted and therefore the Fiscal Revolution, that is to say the transition from Domain State to Tax State, is thought to be something inevitable. This widely accepted interpretation has problematic aspects. First, it simplifies complex transformations and turns a few exceptional cases into the norm, like the fiscal systems that were developed by a few large Italian City-States (which were based on

deficit spending and later on consolidated public debt). Secondly, these studies anticipate the birth of the Tax State, looking to the 12th and at the beginning of the 13th centuries for signs of a return to taxes. But the obsession for origins leads to misunderstandings. There is no evidence that taxes in Europe acquired an important role so soon, unless we consider the extraordinary exactions requested for the crusades or other exceptional cases, but these were irregular and very *ad hoc*. We can attribute the slowness in the transition to Tax State to the fact that by and large the costs of war remained limited. The fact is that the transition to the Tax State came about only between the 13th and 14th centuries. And it is precisely during this phase that we clearly see the effects that a return to pervasive taxation had on the structures of society. What emerged were burdensome phenomena of direct or indirect redistribution of resources performed by the fiscal systems of the Tax States. They were not completely new: what was new about the end of the Middle Ages was the quantity of the resources that were transferred. One of the most noticeable effects of this transformation was the new centrality of the state in the economic system and in social mobility.

The final point that needs to be driven home is a general question raised in this paper. This sketch of medieval fiscality has a circular motion, as if the main outcome of transformations that took almost a millennium was the transition from the Tax State of Roman Empire back to the Tax State of late Middle Ages. But the circularity is only apparent. Only a few characteristic features of late medieval fiscal systems really have close analogies with those of Rome. This is not the place to explain why a return to taxes was not a recycling of ancient mechanisms, and we will confine ourselves to emphasising a few elements. A fundamental difference has to do with the circuits of exaction. During the long period under examination, a single large exacting entity, the Roman Empire, was replaced by a plurality of states, each with its own specific characteristics of extraction: thus, numerous and different circuits were activated. The second element is the establishment of a series of new exaction criteria: the central importance of the land tax was diminished by the multiplication of sources of income that weighed on basic consumption and artisanal production, and sometimes even (though with difficulty) on profits tied to commercial and financial intermediation. It was a process of differentiation and intensification of resource extraction operated by politics and its initial matrix is to be found in the seigneurial powers. Nor should we neglect the lasting importance that the plunder and tribute model had for state funding, no longer directed primarily towards Europe, but towards other continents. In short, the return to taxes was not a recycling of the imperial model, but the addition of a new funding system that went hand in hand with – but did not

replace – the tools that had been developed during the high Middle Ages to fund politics. The third element, at the end of the Middle Ages, is the failure of the late medieval fiscal system to return to the absolutely central position it had probably occupied in the dynamics of the economy during the later Empire. For centuries, private, aristocratic demand had substituted public demand in driving the circuits of production and exchange. In the Byzantine world, as Vivien Prigent shows in his paper, it was the fiscal system itself that determined inclusion in the social and political *élites*. But in the late medieval western world the return to taxes, though of great importance because of the quantity of resources it drained and the effects it had on institutions, society and economy, occurred within a structurally different framework, known for the persistent importance of private demand that fed productive and commercial circuits of increasing intensity.

CHAPTER 9

Landholding and Law in the Early Islamic State

Hugh Kennedy

The question of land-tenure, how Muslims owned land, if they did, and the legal and fiscal status of such land in the early Islamic state in the three centuries which followed the early Islamic conquests remains problematic.[1] Since Max van Berchem published his pioneering monograph *La propriété territoriale et l'impôt foncier sous les premiers caliphs*, arguing, essentially, that there was no such thing as private landed property in the Islamic world and that all land ultimately belonged to the state, the existence of freehold tenure has been much debated.[2] Among the many unanswered questions is the fundamental one of whether Muslims were allowed to own landed property during the first century and a half of Islamic rule and, if so, on what conditions. Was it in absolute ownership, in the sense that the holder was not required to perform any sort of continuing service in exchange for his possessions? Were these holdings alienable in the sense that they could be sold on an open market, and heritable in the sense that they would normally be passed from generation to generation according with the Muslim laws of inheritance? Or were such lands held as fiefs on a quasi-feudal basis where the landholder was required to render services and in which the ownership of the lands could be revoked by the ruler? The question of the position and legal status of landed property in the early Islamic period must also form the basis of any discussion about "Islamic feudalism" and the emergence of the *iqṭā'* and other forms of conditional tenure from the tenth century onwards. The issue of private ownership of landed property became the subject of a vigorous and occasionally violent polemic in the early Islamic period and, as a result, the literature is often confusing and contradictory.

The argument of this paper will be that there was an "Islamic norm" attributed, probably rightly, to the caliph ʿUmar b. al-Khaṭṭāb (ʿUmar I, 634–644). According to this norm, the lands conquered in the first decade of the Muslim

1 For landholding in early Islamic Iraq see the two important articles by M. Morony, "Landholding in Seventh-Century Iraq: Late Sasanian and Early Islamic Patterns," in *The Islamic Middle East, 700–1900: Studies in Economic and Social History*, ed. A.L. Udovitch (Princeton: Darwin Press, 1981), 135–137, and "Landholding and Social Change: Lower al-ʿIraq in the early Islamic Period" in *Land Tenure and Social Transformation in the Middle East*, ed. T. Khalidi (Beirut: University of Beirut Press, 1984), 209–222.

2 Published in Geneva in 1886.

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expansion (*c.* 632–642) would not be distributed to the conquerors but would rather be kept as the communal resource of the Muslim community, and the revenues collected, the *fay'*, would be paid out to them in payments known as *'aṭā'* (literally a gift or, if you like, a *beneficium*). This policy is clearly explained in the work of the late eighth-century jurist Abū Yūsuf al-Anṣārī (d. 182/798), whose writings on fiscal affairs seem to reflect official practice in the early ʿAbbāsid period:

> ʿUmar (b. al-Khaṭṭāb)'s decision not to distribute the land among those who had captured it was guided by God's book (Qur'ān) and was of benefit to all Muslims. The taxes collected from such lands enables the payment of pensions and wages to the troops from this perpetual income, thus making the wars of *jihād* possible and providing security against the reconquest of their lands and places by the enemy.[3]

This meant, of course, that there could be no Arab-Muslim landowners in the conquered lands and that the invaders would not be able to acquire great estates. Nevertheless it was clear from the beginning that there was very considerable pressure from members of the new Muslim elite to become landowners and to have their possessions and status established in the emerging pattern of Islamic fiscal law. There was also pressure from the government, which wished to use the prospect of property ownership to encourage Muslims to settle in vulnerable frontier areas and other Islamic new towns by giving them plots of land on which to live and, in some cases, on which they could grow food. Early Muslim lawyers, who were nothing if not creative, responded to this pressure by developing the legal position of the *qaṭīʿa*. To understand how the system evolved, we must investigate the use of this term.

The desire to own private property seems to have been as old as Islam itself. Arabic sources report traditions that purport to show that the Prophet himself owned private properties, the produce and income of which was used to support his household and other Muslims.[4] In some cases he is said to have given properties described as *qaṭā'iʿ* to important members of the Muslim community. As we shall see, it is difficult to be certain about the historical veracity of these reports, which, as with so many elements of the *sunna* (words and deeds)

3 Abū Yūsuf Yaʿqūb b. Ibrāhīm al-Ansari, *Kitāb al-kharāj.* References are to the English translation by A. Ben Shemesh, *Taxation in Islam* (Leiden: Brill, 1969), III, 68; for further discussion of this see Morony, "Landholding in Seventh-Century Iraq," 153–157.

4 For a discussion of these prophetic traditions, see below, pp. 172–173.

of the Prophet, is uncertain, but they can probably be most usefully understood as contributing to later legal discussions about the legitimacy of landholding.

We are probably on firmer historical ground when looking at the activities of the Umayyad rulers and it seems that the idea and practice of the ownership of private landed property was already established by the reign of the first Umayyad caliph, Muʿāwiya b. Abī Sufyān (661–680), though whether these were considered to be the personal property of the caliph and his family or belonging in some way to the nascent Islamic state is never made clear. It is of course possible that these traditions emerge as part of an attempt by jurists of the early ʿAbbāsid period to denigrate Muʿāwiya and show him as worldly and rapacious but they cannot have developed as part of an argument in favour of private land-holding because the precedent and practice of Muʿāwiya would have carried no weight among the jurisprudents of the formative period of Islamic law.

According to these sources, the first Umayyad caliph, Muʿāwiya, embarked on an ambitious programme of estate development in Medina.[5] Even though the political capital was now at Damascus, Medina remained an important city, enriched by the proceeds of the conquests, an important market, in fact, for agricultural produce. Furthermore, prisoners of war captured in the conquests provided a useful source of cheap and often skilled labour for cultivating these estates.

Muʿāwiya had acquired, by confiscation, purchase or other means a large quantity of agricultural estates as well as the houses (*dūr*) and palaces (*quṣūr*) of many famous early Muslims.[6] These properties were described in the early sources as *ṣawāfī*.[7] The agricultural estates were said to have produced 150,000 *wasq*[8] of dates and 100,000 *wasqs* of wheat, which were taken to Muʿāwiya. These fields were cultivated by a group of Umayyad *mawālī* (freedmen, probably at this stage ex-prisoners of war), led by one Ibn Mina, whose name suggests he may have been of Greek origin.[9]

These agricultural developments aroused considerable opposition in the city, partly because of the way the lands had been acquired and partly because

5 For these developments and their violent consequences, see M.J. Kister, "The Battle of Harra: Some Socio-Economic Aspects," in *Studies in Memory of Gaston Wiet*, ed. M. Rosen Ayalon (Jerusalem: Institute of Asian and African Studies, The Hebrew University of Jerusalem, 1977), 33–49.

6 Kister, "Battle of Harra," 41–43.

7 Kister, "Battle of Harra," 41.

8 A measurement of weight used in the early Islamic period, defined as a camel load or approximately 200 kg; W. Hinz, *Islamische Masse und Gewichte* (Leiden: Brill, 1955), 53.

9 Al-Samhūdī, ʿAlī b. ʿAbd Allāh, *Wafāʾ al-wafāʾ bi-akhbār dār al-muṣṭafā*, ed. Q. al-Samarraʾi (London: Al-Furqan Islamic Heritage Foundation, 2001), I, 250.

of competition over water resources. Trouble broke out when Ibn Mina and his men tried to cultivate lands claimed by the Medinan tribe of Balḥārith b. al-Khazraj. The violence spread and a full-scale rebellion broke out when a group of Medinans rebelled against the government of Muʿāwiya's son Yazīd.[10] On 27 Dhu'l-Ḥijja, 63/26 August 683 the rebels were defeated by an Umayyad army which included a contingent of *mawālī*.[11]

Muʿāwiya continued the policy of agricultural development in Mecca where he dug wells and planted palm trees.[12] In a reported dialogue with ʿAbd Allāh b. al-ʿAbbās, orchards in Mecca were referred to as "a valley flowing with gold," clearly indicating the profitability of such enterprises. As in Medina, so in Mecca, this activity attracted the hostility of the pious, who contended that planting trees where there had never been any before was against the will of Allah.

However, the conquest of the rich and productive lands of the Fertile Crescent raised new issues and it was here that the device of the *qaṭīʿa* was introduced and widely used. There are a number of words used for private landed property in the *sunna* of the Prophet but in later juridical and historical sources the term *qaṭīʿa* is the most commonly used and, rather than being simply descriptive of an area of land, it is a term which acquires a legal and fiscal meaning. *Qaṭīʿa* is a noun deriving from the Arabic root *qṭʿ*, which has the fundamental meaning of cutting or cutting off and separating, implying that this was land separated from the general run of landed property with a distinct fiscal status. The nature of the *qaṭīʿa* has been confused in the secondary literature by the use of the word "fief" to translate it.[13] This is a fundamental misunderstanding. A fief, in common English usage, is a property entrusted to someone in exchange for service, usually military service. In theory, if not always in practice, it was not hereditary nor could it be sold. As will be shown in this paper, the early Islamic *qaṭīʿa* was both heritable and alienable. Further confusion has been caused by the failure to distinguish between the *qaṭīʿa* and the later *iqṭāʿ*. The *iqṭāʿ*, which seems to emerge in the second half of the fourth/tenth century and became the characteristic form of elite landholding in the fifth/eleventh and sixth/twelfth centuries, did indeed resemble the "fief," being essentially the grant of public taxation

10 Al-Samhūdī, *Wafāʾ*, I, 250–251.

11 Kister, "Battle of Harra," 44.

12 M.J. Kister, "Some Reports concerning Mecca from Jahiliyya to Islam," *Journal of the Economic and Social History of the Orient,* 15 (1972), 61–93, at 88–91.

13 As, for example, in the very influential Hitti and Murgotten translation of the *Futūḥ al-buldān* of al-Balādhurī; see below, n. 16.

to individuals.[14] It was not hereditary, at least in theory, could not be sold and in many cases was time limited and subject to periodic redistribution. The confusion is more explicable in that both words derive from the same Arabic root *qṭʿ* and the phrase *aqṭaʿa qaṭīʿan* is used to describe the granting of a *qaṭīʿa*.[15]

In order to understand the various contexts in which this term is used in the first two centuries of Muslim rule in the Fertile Crescent, we will begin not by looking at the legal or lexicographical material, but at reports in historical narrative sources about its uses. In Islamic texts of the first three centuries of Islam, the term is used to describe a variety of different types of landholding. The first are fairly small plots of land given to individuals to encourage them to settle in urban areas or frontier fortresses. The second sort might be described as agricultural *qaṭīʿa*. They were much more extensive and consisted of rural territories given out to members of the conquering armies and later elites to irrigate and bring into cultivation. There was also a continuum from the *qaṭīʿa* which seem to have been little more than a plot for a house to much larger areas with some, like some of the *qaṭīʿa* of Basra, being somewhere in the middle. In all cases they seem to have been properties held in absolute ownership by Muslims, which were both alienable and heritable, that is they could be sold or passed on to the children of the owner.

Al-Balādhurī has a number of mentions of the use of the *qaṭīʿa* for settling Muslim soldiers in vulnerable and potentially dangerous sites along the land border with the Byzantine Empire and the Levantine coast of the Mediterranean where there was still a real danger of attacks by the Byzantine fleet.[16] Men

14 For the classic account of development of *iqṭāʿ* see C. Cahen, "L'evolution de l'iqṭāʿ," *Annales ESC* 8 (1953) and the full updated bibliography "Ikṭāʿ" in *Encyclopaedia of Islam* (2nd ed.) iii. (Leiden: Brill, 1971), 1088–1091. Cahen, however, sees the *qaṭīʿa* as an earlier term for the *iqṭāʿ* which, as will be shown, is emphatically not the case. Significantly, the *Encyclopaedia* has no separate entry for *qaṭīʿa.*

15 See e.g. below, p. 178.

16 Aḥmad b. Yaḥyā al-Balādhurī (d.c. 892 CE) was the author, among other texts, of a book called the *Futūḥ al-Buldān* (Conquests of the Lands). As its name suggests, this is a, one volume, account of the Arab Muslim conquests from the time of the Prophet up to the mid-ninth century. It is, however, much more that a record of expeditions and battles: it is also a record of settlement and administration and the wealth of details makes it by far the most important narrative source for early Islamic fiscal and administrative practice. The text was edited by M.J. de Goeje (Leiden: Brill, 1866) and translated into English by P.K. Hitti and F.M. Murgotten (New York: Columbia University Press, 1916–1924). The references in this article are to the original edition, the pagination of which is given in the margins of the English translation.

would be given small properties on which they and there families would settle. The earliest of these seem to date from the time of the caliph ʿUthmān b. ʿAffān (644–656). In at least one case, that of Antioch, it is specifically said that the *qaṭīʿa* were distributed so that men would remain in what was then a frontier town.

They were not, it would seem, directly linked to the obligation of military or any other service, though in practice owning property in a frontier district must have entailed defending such property in times of attack. There seems to be no evidence of people being deprived of their properties for not performing military service. We are told that *qaṭīʿa* in Seleucia on the coast near Antioch and hence in a vulnerable frontier area were granted to soldiers on condition that they cultivated the land (*ʿammarūha*) and paid a tax of one dinar and one *mudd*[17] of wheat per *jarīb*.[18] Al-Balādhurī also records that in Homs there was a granary (*hurrī*), presumably belonging to the state, to which were transported wheat and oil from the coastal lands which had been given in *qaṭīʿa* and whose holders had been given *sijillāt* (documents) to confirm their status (*muqātiʿatihim*). This short comment raises a number of important issues. The author speaks as if this was the case in his own day (mid-third/ninth century) and it follows immediately on an event that is dated to 250 AH (864–865 CE), but the comment is unsourced and we cannot be certain that it does not refer to more ancient practice. The use of payments in kind was certainly very unusual in fiscal practice at this time. However, it does suggest that these *qaṭīʿa* were paying a rent or tax in produce and it also confirms that they received written documents as proof of their rights.[19]

In the early ʿAbbāsid period, *qaṭīʿa* were used to encourage Muslim settlement in the Thughūr districts along the Byzantine frontier. Again it is al-Balādhurī who provides the details. The first caliph of the new dynasty, al-Saffāḥ, gave *qaṭīʿa* to the newly settled site of al-Maṣṣīṣa and his successor al-Manṣūr did the same.[20] In Tarsus 4000 building plots were given as *qaṭīʿa*, each being twenty square *dhirā,*[21] that is about 10 square metres, which seems very small and certainly space for no more than a modest dwelling.[22] In ʿAyn Zarba al-Rashīd gave houses (*manāzil*) as *qaṭīʿa* while in al-Ḥadath he gave

17 A dry measure of approximately one litre; Hinz, *Islamische Masse und Gewichte*, 45.

18 Al-Balādhurī, *Futūḥ*, 148. A *jarīb* is a measure of land calculated by Hinz, *Islamisches Masse und Gewichte*, 65–66, as about 1592 square metres.

19 Al-Balādhurī, *Futūḥ*, 134.

20 Al-Balādhurī, *Futūḥ*, 165–166.

21 A cubit of approximately 50 cm.

22 Al-Balādhurī, *Futūḥ*, 170, *aqṭaʿa khiṭṭāṭ*.

masākin (dwellings).[23] Only on one occasion at Malaṭya (Melitene) are we told of troops being given agricultural land (*mazāriʿ*) as *qaṭīʿa*. We are also told of troops being paid salaries for frontier duties and we must conclude that in most cases these *qaṭīʿa* were plots on which to build houses, rather than sources of income.

Perhaps the most extensive account of the grant of *qaṭīʿa* plots is found in the narratives of the settlement of Baghdad,[24] where the caliph al-Manṣūr seems to have given much of the land that lay outside the walls of his great Round City to his followers in this way. While some of these *qaṭīʿa*, like the *qaṭīʿa* of his long-serving chamberlain, al-Rabīʿ b. Yūnus, were clearly quite extensive with a population of merchants and other residents and evidently a source of income, most were little more than house lots where important figures in the regime were able to build houses for themselves and their families. There is evidence that some at least of these were the hereditary possessions of the families but in general there is too little evidence to establish any more details about the terms on which they were held.

The second sort of *qaṭīʿa* were what can be described as agricultural *qaṭīʿa*. These were much larger areas of land given out to or purchased by important individuals as sources of income and in order to promote agricultural development. They were recorded in the textual evidence in two main areas, the middle Euphrates valley from Bālis to Qarqīsiyā and the lands around Basra, but the archaeological record suggests that similar estates were developed more widely on the desert margins of Syria and perhaps other areas.

The precedent of acquiring and developing agricultural lands, which had been set by Muʿāwiya was continued by many later Umayyads, notably the sons of the caliph ʿAbd al-Malik (d.86/705). Two of these in particular, Maslama (d.121/738) and Hishām (later caliph, 105-125/724-743), are recorded in texts as investing large sums in bringing dead lands under cultivation and creating large-scale *latifundia*. This literary evidence is confirmed in a number of cases by the archaeological record.[25]

23 Al-Balādhurī, *Futūḥ*, 171, 191.

24 See the accounts of the settlements of the West and East banks of the Tigris in al-Khaṭīb al-Baghdādī, *Taʾrīkh Baghdād* 14 vols (Cairo: Maktaba al-Khānjī, 1941), I, 83–98. See also in the translation by J. Lassner in *The Topography of Baghdad in the Early Middle Ages* (Detroit: Wayne State University Press, 1970), 66–84. Lassner consistently translates *qaṭīʿa* as fief.

25 For the archaeological evidence see S. Berthier et al., *Peuplement rural et aménagements hydroagricoles dans la moyenne vallée de l'Euphrate* (Damascus: Institut Français du Proche-Orient, 2001) and the discussion in H. Kennedy, "The Feeding of the Five Hundred Thousand: Cities and Agriculture in Early Islamic Mesopotamia," *Iraq* 73 (2011), 177–199.

One of the clearest examples of this can be seen in the case of the small town of Bālis on the great bend of the Euphrates river in Syria. Bālis and the surrounding villages had been held by two Greek brothers who served as protectors (*ḥāfidh*) of the area. They seem to have fled to Byzantine territory at the time of the initial Muslim conquest. At some time in the middle Umayyad period, Maslama b. ʿAbd al-Malik was passing through on his way to fight the Byzantines. The lands of Bālis were at this time dependent on rainfall agriculture and only *ʿushr* was paid on them.[26] The people of the villages approached Maslama and asked him to dig an irrigation canal from the Euphrates in exchange for which they would pay him a third of the produce of the land after the *ʿushr* had been paid to the government. According to another version the initiative came from Maslama. The lands were held by him as a *qaṭīʿa* and the *qaṭīʿa* passed to his heirs until it was confiscated after the ʿAbbāsid revolution. The caliph al-Saffāḥ granted the *qaṭīʿa* to his uncle Sulaymān b. ʿAlī and then it was inherited by his son Muḥammad b. Sulaymān who held it until his death. On his death, his brother Jaʿfar had hoped to inherit the property but instead it was confiscated by Hārūn who granted them to al-Maʾmūn as a *qaṭīʿa* that was in turn inherited by his son. It then disappears from the record.[27]

The story of Bālis makes a number of interesting points about the use of the *qaṭīʿa* in Umayyad times. Its fiscal status was justified by the investment that Maslama made in bringing the land under cultivation. As a *qaṭīʿa* it was only liable to pay the *ʿushr*. It was clearly thought of as hereditary but legal formalities could be upset by political expediencies. Recent archaeological excavations have revealed the remains of a *qaṣr*, a characteristically Umayyad high status dwelling on the site which suggests that this was the residential country estate of an important figure and it is most likely that this was occasional residence of Maslama and the centre of his *qaṭīʿa* in Bālis.[28]

Down stream from Bālis, the riverain plains on both banks of the Euphrates were extensively developed in the Umayyad and early ʿAbbāsid periods using *qaṭīʿa* holding as the legal framework within which this development could take place. We know about this from both archaeological and textual sources. This was an area that had been on the frontiers between the Roman and Persian Empires with the result that there was very little rural development in

26 *ʿushr* (tenth) was a tax paid on land owned by Muslims and was very significantly lower than the *kharāj* tax paid by most non-Muslim landholders; see T. Sato, "'Ushr," in *Encyclopaedia of Islam* 2nd ed. (Leiden: Brill, 2000), 917–919.

27 Al-Balādhurī, *Futūḥ*, 150–151.

28 For the recent excavations at Balis see T. Leiston, "Balis. Preliminary reports on the Campaigns 1996–1999," *Berytus* 44 (1999–2000), 35–57.

these potentially rich lands and the main settlements were military outposts rather than agricultural centres. The Islamic conquests changed this situation and the area, far from being a fought over frontier district, lay at the heart of the Muslim ruled Fertile Crescent.

From the beginning of the eighth century, these lands were energetically developed by a number of entrepreneurial Umayyad princes, all sons of the Caliph ʿAbd al-Malik. Hishām, later to be caliph himself, was given lands in the valley, described as *kharāb* or wasteland as a *qaṭīʿa* and it was probably he who had the massive Dawrin canal constructed to bring water to potentially fertile lands in the valley.

Further down the river another son of ʿAbd al-Malik, Saʿīd, called al-Khayr (the Good) because of his asceticism, dug an irrigation canal along the river valley later named Nahr Saʿīd after him. The site had previous been a jungle (*ghayḍa*) full of lions. "The (Umayyad Caliph) al-Walīd gave it to him as a *qaṭīʿa* and he dug the canal and built the buildings that stand there."[29] By the early ʿAbbāsid period small towns and villages had sprung up all along these canals and the foundation of Baghdad in 145/762 certainly gave the area an enormous economic boost by providing a huge new market for agricultural produce.

Nor was it just the valley of the Euphrates river itself which witnessed these developments. Maslama b. ʿAbd al-Malik, the same prince who developed Bālis, also constructed a palace and small town called Ḥiṣn Maslama on the Balīkh river, one of the northern tributaries of the Euphrates and this too became the centre of an extensive network of farms and villages.

The Balīkh river valley saw the peak of development and agricultural activity in the early ʿAbbāsid period but by this time the Umayyad princes and their descendants, who had begun these developments and invested in them so heavily, were no longer on the scene. Despite the legal right to inherit, which seems to have been supported by law, political changes mean that the provisions were null and void and the Umayyads were deprived of all their estates. Even after this forfeiture, it seems that descendants of the Umayyad princes and their households continued to have some connection with these properties. In 163/780 the ʿAbbāsid caliph al-Mahdī was travelling in the Jazīra and came to Ḥiṣn Maslama, still bearing the name of its founder. One of the caliph's uncles who was travelling in his entourage mentioned that the ʿAbbāsids owed Maslama a debt of gratitude because, when Muḥammad b. ʿAlī al-ʿAbbāsī, ancestor of the ruling house, was traveling in the area, Maslama had given him four thousand gold dinars, 2000 to pay his debts and another 2000 to see him on his way. Al-Mahdī, the story says, recognized the obligation and ordered

29 Al-Balādhurī, *Futūḥ*, 179.

that the descendants of Maslama and his *mawālī* (clients or freedmen) who were living in the area should be summoned and they were given 20,000 dinars and regular allowances.[30]

Other parts of the Jazīra away from the great rivers also saw significant agricultural development within the legal and fiscal framework offered by the *qaṭīʿa* system. At the site of Ruṣāfat Hishām (just outside the walls of the ancient city of Ruṣāfa/Sergiopolis) the eponymous Caliph had dug out canals to collect the meager rainfall, making the land suitable for agriculture. The estate (*ḍayʿa*)[31] was confiscated by the incoming ʿAbbāsid regime and passed in the end to Zubayda, wife of Hārūn al-Rashīd, who "built in it the *qaṭīʿa* which bears her name and increased its cultivations."[32] The expression "*abtanat al-qaṭīʿa*," may mean that she built a house there.

More details of the legal status of the early Islamic *qaṭīʿa* come from a remarkable account of the development of properties around the city of Basra in southern Iraq,[33] a city that by the eighth century, if not before, had become the leading trading city on the Gulf. Its origins, however, lay not in maritime commerce but in its foundation in the first decade of the Muslim occupation of Iraq as a base for Muslim soldiers operating in Iraq and later in Iran and Central Asia. Its military function dictated that the new city should be established not by the waterway of the Shaṭṭ al-ʿArab but on the borders of the desert. Strategically this position may have made sense in the first few years of the conquests, when new recruits from the Arabian peninsula were arriving to join the Muslim armies and when there was still a possibility that these armies would have to retreat into the desert in the face of a major Persian counter-attack. Economically and practically, however, the site was far from ideal: it lay some 15 kilometres from the Shaṭṭ al-ʿArab in an environment devoid of agricultural or pastoral lands and indeed of any good

30 Al-Ṭabarī, Muḥammad b. Jarīr, *Taʾrīkh al-rusul waʾl-mulūk*, ed. M.J. De Goeje et al., 3 vols (Leiden: Brill, 1879–1901), III, 495.

31 The term *ḍayʿa* is used to refer to an estate with a small town or village and the agricultural land surrounding it. Unlike the term *qaṭīʿa*, the term *dayʿa* has simply a geographical meaning with no implications for the fiscal status of the property.

32 Al-Balādhurī, *Futūḥ*, 180.

33 Al-Balādhurī, *Futūḥ*. For a disussion on the origins and importance of this text. Wadad al-Qadi, "The Names of Estates in State Registers before and after the Arabization of the Diwans," in *Umayyad Legacies: Medieval Memories from Syria to Spain*, ed. A. Borrut and P. Cobb (Leiden: Brill, 2010), 255–280. Al-Qadi argues convincingly that this is a genuine Umayyad administrative record. For further discussion of landholding in the Sawād and Basra areas in the early Islamic period see Morony, "Landholding in Seventh-Century Iraq," 147–162, and Kennedy, "The Feeding of the 500,000."

running water. There is no evidence of significant settlement in the Sasanian period except along the shore of the Shaṭṭ al-ʿArab. The area around the city was a gravelly desert, a situation that seems to have been true in the late Sasanian period and became true again after the city had moved down to its present position along the Shaṭṭ al-ʿArab sometime between the tenth and the twelfth century.

The inhabitants of this new, sand swept and dust-ridden settlement were rewarded not by grants of land but by cash salaries, in the way of the Islamic norm discussed above. This meant that they were, in effect, a large and continuing market for foodstuffs and other goods and services.

The situation clearly required a very significant investment in canals, irrigation and other forms of agricultural infrastructure. The presence of the army and the demand created by the soldiers and their families meant that there would probably be a profit to be made in the medium and long term. To persuade men to invest both money and time, it was necessary to have a legal framework that would ensure that the owner and developer of the land would indeed have a security of tenure which would mean that he could be reasonably certain of enjoying the fruits of his labour. This is where *qaṭīʿa* landholding could be used to encourage the development of the land and the feeding of the people of the city.

The early economic history of Basra is unique in that we have the ancient and uniquely detailed account of how this was achieved, presented, not as a legal treatise, but rather a series on *akhbār* (anecdotes) typical of tradition in early Islamic historiography. These *akhbār* make it clear that the first *qaṭīʿa* were given out with the clear purpose of leading to economic development. It is said of Ziyād b. Abī Sufyān, governor of the city 45–53/665–673, that he would grant a *qaṭīʿa* for two years and if the grantee brought it under cultivation, he could keep it but if he failed to do so, he would lose it.

The lands thus granted were held in absolute ownership: when one man was asked by an agent of the caliph on what basis he claimed ownership of a piece of land, he replied with a short poem:

> We inherited from our true fathers
> And shall bequeath it when we die to our sons.

There could not be a clearer assertion of the right to absolute ownership.

The anecdotes also demonstrate that there was a market for these properties. In one case a *qaṭīʿa* was sold by its owner, ʿAbd al-Raḥmān b. Abī Bakra, to a *mawlā* (non-Arab convert of Islam). ʿAbd al-Raḥmān is said to have been the first child born in Basra after its foundation in c. 636, suggesting that there was

already a land market in *qaṭīʿa* by the end of the seventh century. There is no indication in this or in any of the other anecdotes about the sale of *qaṭīʿa* that permission from the governor or anyone else was required for this transaction. The owner could, in fact, dispose of it as he wished.

Many of the *akhbār* show the importance of investment, quoted in terms of cash money, in these properties, and large sums of money were devoted to the digging of irrigation canals in the confident expectation that these sums would be recouped from the produce of this new estate. The profitable nature of these investments was, of course, increased by the favourable fiscal regime under which they were managed. While the *akhbār* do not explicitly mention this status, as they did with the issue of hereditary possession, there are clear indications that there were, in most if not all cases, significant tax advantages in owning land in this way.

Finally, these *akhbār* reveal that the legal basis for this landownership could be defended in law. The cases discussed either concern attempts of the politically powerful to deprive people of their lawful inheritance, or problems that occurred when one man dug irrigation canals in land which actually belonged to someone else, a confusion which is easy to imagine in the flat, featureless lands which surrounded the city. In this latter case one of the protagonists brought a lawsuit (*khāṣama*) against the other. Judgment in this case was given not by a *qāḍī* or Muslim judge but rather by the *ṣāḥib al-aḥdāth* (superintendent of events is a possible translation).

The question immediately arises as to what sort of law was being used here. The events described clearly belong to the Umayyad period, that is at least two generations before the production of the earliest surviving canonical treatises of Islamic law. In terms of the division of property among different members of the family, decisions were clearly made according to proto-Islamic law. This was possible, if not exactly straightforward, because inheritance is one of the few areas of law in which Qurʾān gives clear and careful guidelines. In other cases, however, cases like the absolute right to inherit property or the problems caused by men digging irrigation ditches in other people's land, Qurʾān gives no guidance whatsoever. Clearly a different sort of law was being applied here. Are we seeing the application of existing pre-Islamic Sasanian law or a Mesopotamian customary law to these problems which must, after all, have existed as long as men had brought water to irrigate barren land? Or are we witnessing the first developments of a nascent Islamic law? Or a combination of both? The testimony of the *akhbār* suggests a pragmatic response to these questions, with the decision lying in the hands of a secular official. It also strongly suggests that land law at this stage was driven not so much by Islamic principles and paradigms but rather by facts on

the ground to which the authorities needed to respond to settle disputes peacefully if not amicably.

The status of these *qaṭīʿa* as heritable property held, in effect, in absolute ownership under a favourable fiscal regime, may go someway to explaining the widespread building of elite residences along the desert margins of Syria; the absence of such residences in Iraq may simply be the result of the accidents of archaeological survival. Some of these elite residences were linked to agricultural developments whose traces can still be seen on the ground. This is not the place for a detailed discussion of the *quṣūr*, the so-called desert palaces, but simply to note that they form one element in a wider picture of estate development.[34] At Ḥiṣn Maslama and Bālis, both sites where agricultural developments are attested in the texts, there are archaeological traces of high status buildings. We have no such evidence from the developments in the Middle Euphrates valley or the Sawād of Iraq but this may simply be the result of the deficiencies of the evidence.[35] By contrast we have clear archaeological evidence of elite buildings in marginal areas along the edges of the Syrian desert, for which there is no documentary record. Among these is Qaṣr al-Hallābāt, where the palace, constructed in an old Roman frontier fort, and the mosque lay at the centre of an extensive estate whose boundaries can still be traced. At Quṣayr ʿAmra the celebrated bath-house with its Umayyad period wall-paintings was just one element in a development which included a *khān* or *caravansarai* and a number of residences. In the Balqāʾ of Jordan, the country houses at Umm al-Walīd and Khān al-Zabīb stand in the middle of the fertile lands. In the northern part of the desert, the palace and urban settlement at Qaṣr al-Ḥayr al-Sharqī lay at the centre of newly irrigated agricultural lands in an inhospitable part of the Syrian steppe. The constructions here for water harvesting and gathering show a massive investment of both money and ingenuity in exploiting land which at all other times in the history of the area had been little more than an area of gravelly desert.

One striking feature of these high status dwellings is that they were constructed in newly reclaimed lands where there was no tradition of such establishments in earlier history. While not claiming that the structure of

34 The literature on the *quṣūr* is extensive. For a useful introduction see K.A.C. Creswell, *Early Muslim Architecture*, revised edition by J.W. Allen (Aldershot: Scolar Press, 1989). For a more recent overview, D. Genequand, "Umayyad Castles: The Shift from Late Antique Military Architecture to Early Islamic Palatial Building" in *Muslim Military Architecture in Greater Syria*, ed. H. Kennedy (Leiden: Brill, 2006), 3–25.

35 Sawād or Black Land was the name given to the alluvial plain of southern Iraq between Baghdad and the head of the Gulf.

land-ownership is the sole explanation for this extraordinary architectural efflorescence, it is surely no coincidence that all these palatial structures date from exactly the period when *qaṭīʿa* landowning was at its most widespread.

As we have seen from the Basra examples, the rights of the holders of *qaṭīʿa* were defined and, to an extent, protected by law. These developments and the cases to which they gave rise date from at least a century before the earliest development of canonical *sharīʿa* law as it is known today.

Apart from regulating the rights and duties of landowners, there was a wider question raised by the extensive granting of *qaṭāʾiʿ*. The ownership of large estates was hugely controversial: was it in accordance with Islamic law? In the first two centuries of Islam, a strong body of opinion emerged which held that the possession of *latifundia* was contrary to good Islamic practice.[36] The fundamental argument against them was the idea that all the conquered lands should form part of the *fayʾ* of the community as a whole. They should be cultivated by a subject population and their revenues used to pay the pensions/salaries (*ʿaṭāʾ*) of the Muslims. There was also the secondary argument that the owning of land diverted the Muslims away from the *jihād*, which was the only proper way for the pious to enrich themselves. Along with this was the feeling that Muslims who owned landed estates could be obliged to pay the *kharāj*, which was humiliating in that it lowered the Muslims to the status of subject peoples.[37]

After the legal work of al-Shāfiʿī (d. 204/820), it had become generally accepted that Islamic law should be firmly based on the traditions of the Prophet himself. Islamic law became even more heavily reliant on the *sunna* of the Prophet, that is what the Prophet is said and believed to have done, and any discussion of landholding among the Muslim elite must begin with an examination of what was believed or alleged to have been the practice of Muḥammad and his companions. When these matters were discussed, jurists were concerned to establish whether or not the Prophet and his companions had owned property, for if it could be proved that they had, then there could be no question about the Islamic legitimacy of such ownership.

As a result, as noted above, numerous traditions emerged claiming to show that the Prophet Muḥammad himself did become a landowner and cultivated his estates to feed his family, to provide a contingency fund in case of disaster, and for a variety of charitable causes. Some of this land was taken from the Jewish inhabitants of the Medina oasis. In the lands of the Banū Naḍīr, for

36 On this debate, see M.J. Kister, "Land Property and Jihād: A Discussion of Some Early Traditions," *Journal of the Economic and Social History of the Orient* 34 (1991), 270–311.

37 See, for example, Ibn Sallām, *Al-Amwāl,* 205.

example, he is said to have cultivated the land, which is described as his personal possession (*khāliṣa*), and to have used the produce as food (*qūt*) for his family and wives. The surplus (*mā faḍala*) he put to arms and armour for the Muslims.[38] This implied that the surplus was sold, or possibly bartered, for arms. Some of the rest of the land was given as *qaṭā'i'* to some of his closest companions. He also possessed an estate at al-Juraf, three miles from Medina which he cultivated (*izdara'a*) and which the caliph 'Uthmān subsequently gave as a *qaṭī'a* to al-Zubayr, and a number of properties known as al-Ṣadaqāt al-Sab', again near Medina, which are said either to have been left to him by a Jew called Mukhayriq or to have been part of the properties taken from the Banū Naḍīr.[39] According to yet another account, he had bought the properties from some Jews and irrigated them and cultivated date palms.[40]

Some important and admired figures among the companions of the Prophet were also said to have been major landowners. Among them was 'Amr b. al-'Āṣ, conqueror and first Muslim governor of Egypt. His estate at al-Waht, inherited from his father, lay on the road between Mecca and Ṭā'if.[41] It was the source of immense wealth: when the raisins it produced were piled up, we are told, it was like a lava field.[42] It was in turn inherited by his son 'Abd Allāh. It may have been a residential estate, for 'Amr's father had died on the way there in 622. When 'Abd Allāh owned it, it was administered by an agent (*qayyim*) and cultivated by his *mawālī*. When he feared that the Caliph Mu'āwiya, who had tried to buy the estate, was going to seize it by force, he armed his *mawālī* to defend it. When asked not to resort to violence, 'Abd Allāh was said to have quoted a tradition of the Prophet to the effect that "He who was killed in defence of his property was a martyr (*shahīd*)." All these traditions served to legitimise landholding by prominent individuals.

There were also practical arguments stressing that land was a good investment and according to some reports the Arabs used to say "sell animals and buy dead lands (*mawātan*)." Land, it was argued, was a better investment than gold or silver which would never grow or increase like an agricultural estate.[43]

It is probable that the earliest land law used by Muslims in Iraq, as in the cases referred to above, was based on Sasanian law, which while designed for

38 Al-Balādhurī, *Futūḥ*, 18.

39 Al-Samhūdī, *Wafā'*, IV, 207–208.

40 Al-Samhūdī, *Wafā'*, III, 403–410.

41 See M. Lecker, "The Estates of 'Amr b. al-'Āṣ in Palestine," *Bulletin of the School of Oriental and African Studies* 52 (1989), 24–37, at 25–26.

42 Yāqūt al-Ḥamawī, *Mu'jam al-buldān*, sv.

43 For these arguments, see Kister, "Land Property and Jihād," 290–294.

Magian Persians influenced the law of the Babylonian Talmud and Nestorian Christian legal writings.[44] Such practices continued after the Muslim conquests and it is highly likely that the early Muslims borrowed aspects of this law as their Jewish and Christian neighbours did. This seems to have included the rights to absolute possession of land and to inherit and sell it.

By the middle of the second Islamic century, a number of Muslim legal treatises began to be composed in which the existing position, that landed estates were owned by prominent Muslims, was developed and given an Islamic justification. The oldest of these legal treatises to survive is the *Kitāb al-kharāj* (Book of Taxes) ascribed to Abū Yūsuf al-Anṣārī (d. 182/798). Abū Yūsuf was unusual among the early jurists in being actively involved in the administration of justice and being the main legal adviser to the Caliph Hārūn al-Rashīd; it is probable that his opinions represent the reality of government policy at the time and the fiscal position of the *qaṭīʿa* discussed by Abū Yūsuf presumably reflects early ʿAbbāsid practice. He makes a number of important points. According to him, "*qaṭīʿa* in Iraq were granted from the lands of the Persian kings and their families which were not in possession of anybody. From such and similar ownerless or heirless properties a just ruler should give *qaṭīʿa* to those who had achieved something valuable for Islam." This essentially is a legal loophole, or in Arabic a *ḥīla*, which provides an Islamic justification for the existing fact of *qaṭīʿa* landownership. He goes on to say that anyone (presumably a ruler or governor) "who confiscates such property and gives it to someone else is considered to be stealing." This implies clearly that such property was considered to be held with security of tenure and that no service was required from the owner. The Caliph ʿUmar I had said, he claims, that if someone had been granted land and neglected to cultivate it for three years, other people who will farm it would be allowed to take over.[45]

He also explains that the Umayyad caliph ʿUmar (II) b. ʿAbd al-ʿAzīz (99–101/717–720), who is frequently used as a spokesman for Islamically correct fiscal practice in Umayyad times, related the payment of tax to the nature of irrigation, stating clearly that *ʿushr* (that is a tithe or tenth of the income derived from the property, significantly less that the *kharāj*) only should be paid on lands "requiring investment for digging canals, erecting farm buildings and other heavy expenses for the farming of the *qaṭīʿa*". Double *ʿushr* or even

44 For Sasanian law and its influence on early Muslim practice, Morony, "Landholding in Seventh-Century Iraq," 136–143.

45 Abū Yūsuf Yaʿqūb b. Ibrāhīm al-Thaqafī, *Kitāb al-kharāj.* References are to the English translation by Ben Shemesh, *Taxation in Islam*, III. 76.

the whole *kharāj* can be demanded from a *qaṭīʿa* that is watered by existing irrigation canals on neighbouring lands "at the discretion of the ruler."

This last comment is extremely significant. It makes it clear that *qaṭīʿa* developed on newly irrigated lands were subject to a much lower rate of taxation (the *ʿushr* or tenth) than already cultivated estates on which the Muslim owners had to pay the much higher *kharāj*. The advantages of holding land as *qaṭīʿa* was not only that it was liable to a lower rate of taxation but also that it avoided the dilemma of the Muslim being liable to *kharāj* and so reducing his social status to that of the conquered peoples.[46] For Abū Yūsuf writing in the early ʿAbbāsid period, *qaṭīʿa* land-owning was firmly recognised in Islamic law.

There is a fuller discussion of these issues in the *Kitāb al-amwāl* (Book of Wealth) of Abū ʿUbayd al-Qāsim ibn Sallām (d. 224/838).[47] Ibn Sallām was *qāḍī* of Tarsus in Cilicia for almost twenty years, so he had practical administrative experience, but he was also very well versed in the *ḥadīth* (traditions of the Prophet) which were, by the time he was writing, the essential foundation for legal opinions. It was Ibn Sallām who collected the evidence that the Prophet himself granted *qaṭīʿa* at least on a limited scale. The two clearest examples he adduces are the grant of lands at Khaybar with (fruit) trees and palms to the veteran companion, al-Zubayr b. al-ʿAwwām,[48] and the lands around Bethlehem to Tamīm al-Dārī.[49] In the case of the latter this was a sort of pre-emptive grant because the lands had not yet been taken by the Muslims, and Tamīm, who came from the area, is said to have requested the lands as a gesture of confidence in the Prophet and the future expansion of Islam. When the lands were conquered in due course, the Caliph ʿUmar confirmed the grant but with the stipulation that the lands could not be sold and, Ibn Sallām says, the family still held the lands in his own time, nearly two centuries after the initial grant, clearly demonstrating that the property was heritable. It is impossible to assess the historical reliability of these reports but they show that lawyers in the eighth and early ninth centuries believed that the practice of giving out *qaṭīʿa* had Prophetic sanction. However, neither of these cases conformed to later ideas about the granting of *qaṭāʾiʿ* since, in both cases, the land was already cultivated. In the case of the Khaybar lands this was justified either because

46 For the humiliating nature of *kharāj* see the traditions collected by Kister, "Land Property and Jihad."

47 Ed. M.K. Haras (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986); English trans. I.A.K. Nyazee, *The Book of Revenue* (Reading: Garnet Publishing, 2002). All references are to the paragraph numbers, which are the same in the Arabic and English versions.

48 Ibn Sallām, *Al-Amwāl*, 678.

49 Ibn Sallām, *Al-Amwāl*, 683–684; see also al-Balādhurī, *Futūḥ*, 129, where he adds that the Prophet wrote a *kitāb* confirming their ownership.

the lands had been brought under cultivation by an Ansari inhabitant of Medina who had given them up voluntarily or because they had formed part of the Prophet's *ṣawāfī* which he could, of course, give to whomever he wished.[50] It was not, in short, a precedent for giving cultivated lands as *qaṭīʿa*. Ibn Sallām then goes on to discuss other examples of pre-emptive gifts, stressing again that they are not normative. He has problems, however, with the grant of land at ʿAqīq and has to content himself by saying that he cannot find anything "more extraordinary" (*aʿjab*) than this.[51]

The development of the classic theory of the granting of *qaṭīʿa* is ascribed by Ibn Sallām to the decisions of the caliphs ʿUmar (I) b. al-Khaṭṭāb and ʿUthmān b. ʿAffān. ʿUmar is portrayed as generally hostile to, or at least suspicious of, the granting of private estates, but he did establish the categories of lands that were to form part of the *ṣawāfī*, which now comes to mean lands belonging to the state. These included the lands of those killed in battle (against the Muslims), lands belonging to Muslim deserters, lands of Kisrā (a generic name given by the Arabs to Sasanian kings) and the royal family, lands that were waterlogged (*maghid maʾ*) and lands set aside for the support of the postal service.[52] In another anecdote ʿUmar is portrayed as distributing properties, in one case a piece of dead land (*arḍ mawāt*) which the new owner subsequently sold, showing that it was his in absolute ownership.[53]

Ibn Sallām goes on to explain that all these were lands whose owners (*ahl*) had deserted and which had no inhabitants to cultivate them and that they were therefore at the disposal of the ruler. When ʿUthmān became caliph he decided that it would be better for the Muslims and their *kharāj* if these lands were cultivated rather than being left idle. He therefore gave them as gifts (*aʿṭahā … iqtāʿan*) to those who would cultivate them as other lands were cultivated and would pay the dues to the Muslims that other lands paid.[54] He then gives a number of illustrative examples, including villages in Iraq that had been part of the Persian royal lands.[55] He granted lands in Basra, subsequently known as Shaṭṭ ʿUthmān, to ʿUthmān b. Abī ʾl-Āṣ al-Thaqafī because they were waterlogged (*sabakh*) and saline, and he drained the land (*istakhrajahā*) and revived it.[56]

50 Ibn Sallām, *Al-Amwāl*, 693.

51 Ibn Sallām, *Al-Amwāl*, 694.

52 Ibn Sallām, *Al-Amwāl*, 696; see also Abu Yusuf, 32, according to whom the yields of the *ṣawāfī* in Sawād in the time of ʿUmar were either 4,000,000 or 7,000,000 *dirhams*.

53 Al-Balādhurī, *Futūḥ*, 12–13.

54 Ibn Sallām, *Al-Amwāl*, 696.

55 Ibn Sallām, *Al-Amwāl*, 698.

56 Ibn Sallām, *Al-Amwāl*, 699.

Ibn Sallām then discusses problems that could and did arise from these grants. ʿUmar b. al-Khaṭṭāb is said to have defined what was meant by reviving land. The fundamentals were building on it and bringing it under cultivation (*al-bunyān wa'l-ḥarath*). The most basic operation was providing water, whether by opening up a canal, uncovering a spring or digging a well. If a man does this and then builds on the land and cultivates it, this is "complete revival" (*iḥyā' kullhu*) with the implication that it belongs entirely to him. If however he only provides water and other people cultivate it, then he only receives revenues proportionate to his expenditure.[57] We also hear how the boundaries of a *qaṭīʿa* were established, by setting up pillars (*manāran*), digging a ditch (*hafīr*) or trench (*musannāh*). What if someone was given a *qaṭīʿa* and did not bring it under cultivation? What happened if someone else appeared and did revive this land, whether he knew that it had been granted to someone else or not?

Ibn Sallām, then, provides the classic account of the development of Muslim law on *qaṭā'iʿ*. They are clearly intended to provide a legal basis consonant with the emerging principles of Islamic law, to land grants held in absolute ownership so long as the owner builds on them and brings them under cultivation. What is less clear is the fiscal status of the properties according to Ibn Sallām. The only comment he makes is an incidental statement that they should pay *kharāj* to the Muslims like other lands do but whether this means *kharāj* as the full land-tax or a generic term for any sort of taxation is not clear.

Written title deeds had been part of the legal structure of landholding in Sasanian times,[58] and we have seen above the mention of *sijillāt* confirming the grant of *qaṭīʿa*. Very few administrative documents have survived from the early Islamic Fertile Crescent but we do seem to have one surviving grant of a *qaṭīʿa* from the beginning of the ʿAbbāsid period.[59] It comes from the local history of Mosul composed sometime in the fourth/tenth century by one Abū Zakariyyā al-Azdī. The author explains how he was shown copies of two documents granting two parts of a *qaṭīʿa* in the city of Mosul to one Wā'il b. al-Shaḥḥāj al-Azdī al-Mawṣilī. He was convinced of its genuineness by the ancient appearance of the texts and the sealings. Wā'il's family had clearly thought it worth preserving the original for at least a century and a half, presumably in case they had to produce evidence of ownership in court.

The circumstances of the donation were this. After the defeat of the armies of the last Umayyad caliph, Marwān II, on the Zāb river by the

57 Ibn Sallām, *Al-Amwāl*, 717.

58 Morony, "Landholding in Seventh Century Iraq," 136.

59 The text is given in Abū Zakariyyā al-Azdī, *Ta'rīkh al-Mawṣil*, ed. Ali Habiba (Cairo, 1968), 158.

advancing ʿAbbāsid troops in 132/750, the revolutionary army advanced to the city of Mosul. Here Wāʾil b. al-Shaḥḥāj brought his family followers out in support of the ʿAbbāsids, so enabling them to take the city without a major siege or battles. As a reward they were granted the *qaṭīʿa* that had once formed parts of the estates which the Umayyad caliph Hishām had held in the city.

> Then began the year 136 (753–4)
>
> In it Abūʾl-ʿAbbās ʿAbd Allāh b. Muḥammad b. ʿAlī [60] granted (*aqṭaʿa*) to Wāʾil al-Shaḥḥāj al-Azdī al-Mawṣilī two plots of land (*qiṭʿatayn*) in the lower suburb (*rabaḍ*) in the land known as the *qaṭāʿi* Banī Wāʾil. Waʾil b. al-Shaḥḥāj and his brothers, according to what I have been told, had risen up with ʿAbd Allāh b. ʿAlī in pursuit of Marwān in the year 133. It was told on the authority of Aḥmad b. Zuhayr who said, "ʿAbd al-Wahhāb b. Ibrāhīm said that ʿAbū Hāshim b. Mukhallad b. Muḥammad said, 'In his flight Marwān reached Egypt. Then he left it and stayed in a place called Būṣīr. Ismāʿīl al-Ḥārithī and Shuʿba (b. Kathīr al-Māzinī) went after him and with them were some horsemen of the people of Mosul and they killed him there'."
>
> Masrūr b. Muḥammad b. Ḥamdawayh b. Masrūr al-Shaḥḥāj brought out for me the actual document (*kitāb*) which Abūʾl-ʿAbbās (al-Saffāḥ) had written for Wāʾil al-Shaḥḥāj, as it was explained to me, and the document (*kitāb*) is witness (*shāhid*) to the truth of what was found and mentioned in it and this is what I found in it: "In the name of Allah, the merciful, the Compassionate, this is a document from ʿAbd Allāh, Commander of the Faithful,[61] to Wāʾil al-Shaḥḥāj: indeed the Commander of the Faithful has given him (*aʿṭāhu*) a palace (*qaṣr*) made of sundried brick and clay which had belonged to Hishām b. ʿAbd al-Malik the Umayyad and some land (and he mentioned its extent in the document (*sijill*)) and every right (*ḥaqq*) which is attached to it. If the Commander of the Faithful changes his mind about what he has given him, he has the right to do so. The Commander of the Faithful has not given him the rightful possessions of any Muslim or dhimmī (*muʿāhid*)." Muḥammad b. Ḥubaysh wrote this in Jumādā II of the year 136 and Abūʾl-ʿAbbās put his seal at the bottom and his mark (or signature,

60 The ʿAbbāsid caliph al-Saffāḥ 749–754. It is interesting that the formal regnal titles of the Caliphs are never used in these documents, another indication of their genuine antiquity.

61 The first ʿAbbāsid caliph Abūʾl-ʿAbbās, titled al-Saffāḥ.

ʿallāma) at the top. Masrūr b. Ḥamdawayh said that it was the actual words (*lafdh*) of Abū'l-ʿAbbās.

I was told by Masrūr b. Ḥamdawayh b. Masrūr from his father and his grandfather that the reason for the granting (*iqṭāʿ*) by Abū'l-ʿAbbāṣ of the *qaṭīʿa* in the year 136 was that he was the first to come out and join ʿAbd Allāh b. ʿAlī[62] when he routed Marwān b. Muḥammad at the Day of the Zāb. Then he came with him to Mosul and the people of Mosul donned the black and came out to ʿAbd Allāh b. ʿAlī and entered into obedience to him. Wā'il b. al-Shaḥḥāj rose up with Ibn ʿAlī in pursuit of Marwān and acquired a good reputation. ʿAbd Allah b. ʿAlī was impressed by his bravery and his obedience and praised him to Abū'l-ʿAbbās so he (Abū'l-ʿAbbās) granted him the first *qaṭīʿa* …"

There then follows a gap in which other events are discussed before the author returns to the grant of the second part of the *qaṭīʿa*.[63]

In the year 139 (756–7) Wā'il b. Shaḥḥāj al-Azdī was granted (*uqṭīʿa*) the rest of his *qaṭīʿa* in Mosul. I was told by Masrūr b. Muhammad b. Ḥamdawayh from his father and his grandfather that Abū Jaʿfar ʿAbd Allāh b. Muḥammad b. ʿAlī[64] granted Wā'il b. al-Shaḥḥāj this *qaṭīʿa* and he produced for me the actual document (*kitāb*) that Abū Jaʿfar wrote for him. I was convinced of its genuineness because of its antiquity (*ʿataqihi*) and its seals and handwriting: "In the name of Allah, the merciful, the compassionate. From ʿAbd Allāh, Commander of the Faithful to Wā'il b. al-Shaḥḥāj al-Azdī of the people of Mosul. The Commander of the Faithful has given him land from the *ṣawāfī*[65] in Mosul next to the land and the palace which Abū'l-ʿAbbās, may God have mercy on him, had given him in the lower part of the suburb and whose area was 52 *jarīb*.[66] Its first limit is from the road that is below the house of Ziyād al-Ḥaddād (the blacksmith) in the suburb of al-Ḥaḍar al-Asfal.[67] Then it goes beside the Tigris which it meets at right angles at the lower bay (*khalīj*) which is next to the island of the Banū'l-Ḥabḥāb. Then it descends beside the

62 The uncle of the caliph and the commander of the ʿAbbāsid forces sent against the Umayyads.

63 al-Azdī, *Taʾrīkh*, 171.

64 That is the second ʿAbbāsid caliph, titled al-Manṣūr.

65 Lands belonging to the state.

66 Hinz, *Islamische Masse und Gewichte*, 65–66, calculates the *jarīb* as 1592 square metres.

67 Unfortunately our present state of knowledge of the historical geography of early Islamic Mosul does not permit us to identify any of these toponyms with any confidence.

island of the Banu'l-Ḥabḥāb until it reaches the island of Abū Thawr. Its limit on the *qibla* (south) side in the middle of the Tigris between the road below the house of Ziyād al-Ḥaddād. Then it follows the garden and its wall on the side next to the lower land of the city until it reaches the corner of the wall that is by Tall al-Ṣulūb (Hill of the Crosses?). Its western boundary is from the mill of the Commander of the Faithful descending along the river opposite the land of ʿImrān b. ʿAṭā and it runs beside the mountain (*jabal*) until it reaches the island of Abū Thawr. Its boundary on the *qibla* side runs from the mountain in the direction of the island of Abū Thawr heading for the Lower Bay until it reaches the Tigris.

If the Commander of the Faithful changes his mind about what he has given him, he has the right to do so. If something happens (*ḥadatha ḥadathun*) to the Commander of the Faithful, while (the property) is in his hands, then it belongs to him and his heirs (*ʿaṣaba*). The Commander of the Faithful has not given him the rightful possessions of any Muslim or *dhimmī*.

The following witnesses gave oaths over this: Yaḥyā b. Saʿīd, Sufyān b. Muʿāwiya al-Qurashī, Sulaymān b. Mujālid, Sulaymān b. Abī Sulaymān. It was written in Rabīʿ 11 139.

Sufyān b. Muʿāwiya and Yaḥyā b. Saʿīd were both Mosulis.

Abū Ṭāwus reports from his father and grandfather as follows: The island which was in the possession of Hishām b. ʿAbd al-Malik b. Marwān had belonged to a family (*qawm*) called the Banū Burayḍa of Azd and Hishām b. ʿAbd al-Malik b. Marwān had bought it from them for 70,000 *dirham* and planted it with palms and trees and it was one of the best things you ever saw. When the Umayyad regime fell, the people of the city came out and cut down the trees and the palms. When the Banū'l-ʿAbbās took control they made it into state lands and then gave it as a *qaṭīʿa* to Wā'il.

Conclusion

The *qaṭīʿa* was a legal device worked out by early Islamic lawyers to justify the possession of landed estates by members of the Muslim elite in defiance of the widespread feeling among many ordinary Muslims that all the conquered lands should be held in common and the revenues derived from them should form the *fay'* of the whole Muslim community. This solution also had the advantage of sparing those Muslims who owned the *qaṭīʿa* the humiliation of paying the *kharāj* as if they were unbelievers. There were a variety of

conditions developed to justify *qaṭīʿa* land and to make it clear that these properties were exceptional and should be treated differently. The clearest of these was that the land should be "dead," uncultivated land that required investment to irrigate, drain or clear it.

The use of *qaṭīʿa* landholding led to the rise of what was effectively a landed aristocracy or at least a landed gentry among the Umayyad elite, dependent on the income from their estates rather than state salaries or pensions. It also saw the development of extensive and numerous agricultural estates on the desert margins of the Fertile Crescent. The *quṣūr* of the Umayyad period have long posed something of a problem for historians: why should it be that for the Umayyad period alone in the longue durée of the history of the area, elite residences were constructed in these areas? Of course there were many different factors at work and the *quṣūr* differed from each other in many ways. Nonetheless, it cannot be chance that these developments coincided so precisely with the period when *qaṭīʿa* was widespread.

Two further points should be stressed. The first is that the use of this fiscal device seems to have been confined to the Fertile Crescent and, probably, the Hijaz. There seems to be no reference to agricultural *qaṭīʿa* in Egypt or on the Iranian plateau, still less in al-Andalus where the Syrian legacy might have been expected to preserve it. The second is that it fell into disuse by the end of the second/eighth century. It is probable that *qaṭīʿa* were still held by descendants of the original owners in the Basra area but no new ones were created. The *qaṭīʿa* in the Middle Euphrates valley were all taken over by the Caliph Hārūn al-Rashīd and incorporated in the caliphal *ṣawāfī*. The *qaṭīʿa*, in short was a fiscal device of the first two centuries of Islam, in no way to be confused with the *iqṭāʿ* of later periods. It is of importance, however, because it shows beyond all doubt that early Muslim society did have a concept, almost certainly inherited from Roman and Sasanian legal practice, of holding property in full ownership. It also shows that early Islamic law, far from being derived exclusively from Qurʾān and *sunna*, incorporated elements of existing systems of law to cope with the realities of landownership in a complex agricultural and urban society. Which is why this paper is called "Landholding and Law" rather than the more euphonious "Law and Landholding."

CHAPTER 10

The Mobilisation of Fiscal Resources in the Byzantine Empire (Eighth to Eleventh Centuries)

Vivien Prigent

Byzantium stands out among the states of the Middle Ages by the continuing importance of two facts: the primacy of the written act in its administration, and the vigour of its monetary economy. Indeed, combined, these two characteristics made of Byzantium the "tax-based state" *par excellence*, established upon the "tributary mode of production," that is a state financed first and foremost by the fiscal exploitation of the territory and the population under its control. This view has been best elaborated by the representatives of what might be referred to as the Birmingham school, researchers such as Michael Hendy and John Haldon.[1] Their work, which today benefits from quite a large consensus, as displayed in its influence on that of Wolfram Brandes or Chris Wickham,[2] highlights the true "Byzantine miracle": to have survived against all odds, throughout the high Middle Ages, an extraordinary series of crises, while exploiting limited resources as carefully as possible; and this without the sources conveying memory of any large-scale tax-related revolts.

Even so, defining the Byzantine state as "a tax-based state" does not resolve everything, and the development of the fiscal system as much as that of its

1 M.F. Hendy, *Studies in the Byzantine Monetary Economy c. 300–1450* (Cambridge: Cambridge University Press, 1985); L. Brubaker and J. Haldon, *Byzantium in the Iconoclast Era c. 680–850: a History* (Cambridge: Cambridge University Press, 2011), which contains references to John Haldon's works; and notably the famous J. Haldon, *The State and the Tributary Mode of Production* (London and New York: Verso, 1993). Generally speaking, I will frequently draw upon the recent summary by Brubaker and Haldon, as representative of the "latest development" of their research; W. Brandes, *Finanzverwaltung in Krisenzeiten. Untersuchungen zur byzantinischen Administration im 6–9. Jahrhundert*, Forschungen zur byzantinischen Rechtsgeschichte 25 (Frankfurt-am-Main: Löwenklau-Gesellschaft, 2002), with J. Haldon's important review in the *Byzantinische Zeitschrift* (2003), 717–728.

2 See the description of Byzantium in C. Wickham, *Framing the Early Middle Ages* (Oxford: Oxford University Press, 2005); and his important "The Other Transition: From the Ancient World to Feudalism," *Past and Present* 103 (1984), 3–36, in the altered version included in his *Land and Power: Studies in Italian and European Social History, 400–1200* (London: British School at Rome, 1994), ch. 1.

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internal balances are extremely complex subjects.[3] To cut straight to the point, the shape of the tributary system was determined by how the authorities responded to five related questions: what could be levied as tax? What was the basis for establishing fiscal obligations? What was the levying framework? Who carried out the levy? And what was the circuit of the product of taxation? We will understandably not consider in all minutiae each of these questions, some being less controversial than others, and yet it seems to me that they constitute the necessary framework for any overall study.

The first question addresses the relative extent of payments in kind, in cash and in service required of the populations, along with its wide range of implications, notably strategic. The second question concerns how tax was calculated, a crucial point for understanding the impact of taxation on the economy at large. The third question looks into the nature of tax-assessment units and notably their size, the importance of which has been under-rated. The fourth question leads one to consider the relationship between those responsible for and those benefiting from the tax levy. Finally, the last question examines the existing relationship between areas of levy, storage and investment of the fiscal product, this issue being connected with the question of public infrastructures.

Of course, the responses to these five fundamental questions might vary over time, just as the choices made might be influenced by a whole range of factors that the state could either not or only poorly control. Yet, in the end, and this point is perhaps not often enough emphasised, the solution adopted by the state always aimed to reach the best equilibrium between two concurrent, and to a certain extent incompatible, imperatives: to maximise revenue and not to jeopardise political control. Herein lies an essential interpretative grid for understanding the Byzantine state's tax policies. We will examine the period spanning the seventh-century crisis to the beginning of the twelfth century, which constitutes a coherent whole, without foregoing appropriate forays either side of this chronological range. It goes without saying that we will reflect upon a mostly ideal system, in practice open to infinite variations throughout the imperial territory.[4] What we are

3 In addition to the above-mentioned works, still essential for the later period are the "classics": F. Dölger, *Beiträge zur geschichte der byzantinischen Finanzverwaltung, besonders des 10. und 11. Jahrhunderts* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1960[2]); and N. Oikonomidès, *Fiscalité et exemption fiscale à Byzance* (*IX^e–XI^e s.*), Institut de Recherches Byzantines. Monographies 2 (Athens: Fondation Nationale de la Recherche Scientifique, 1996).

4 Thus, certain areas only paid fixed amounts that had more in common with a tribute than a truly organised taxation system; see, for example V. Prigent, "Notes sur l'évolution de l'administration byzantine en Adriatique (VIII^e–IX^e siècle)," *Mélanges de l'École française de Rome. Moyen Âge*, 120–122 (2008), 412–441

looking for are the principles of the system and the implications of the prevailing choices.

1 The Shape of the Levy: The Primacy of Tax Paid in Cash

The first point we will address relates to the shape that levies took. What did the state require from its subjects? To answer this we must take three elements into account: commodities, cash and labour. These categories are admittedly not entirely independent of each other, yet may serve as a starting point. A prime concern was practicability, for the state did not have full rein over its choices. There was, for example, the matter of the inelastic supply of precious metals, which greatly affected the ability of monetised taxation to function properly.[5]

The equilibrium between levying in kind and in cash has been one of the most debated points in Byzantine fiscal history. In particular, those subscribing to the Birmingham school have emphasised the consequences of the considerable demonetisation of the economy, which would have occurred in the second half of the seventh century, and would have continued until the ninth century, when the Amorians' abundant monetary production relaunched the circulation of the currency.[6] This notion is based upon the real growing scarcity of new coinage on Byzantine sites, as illustrated, for example, by the case of Cappadocia (Fig. 1).[7]

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5 The importance of this factor is clearly apparent in the onset of the eleventh-century devaluation; C. Morrisson, "La dévaluation de la monnaie byzantine au XI^{e} siècle: essai d'interprétation," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 6 (1976), 3–47. More generally on the topic, see, C. Morrisson, "Byzantine Money: Its Production and Circulation," in *Economic History of Byzantium from the Seventh through the Fifteenth Century*, III, ed. A. Laiou (Washington, D.C.: Dumbarton Oaks, 2002), 942–946.

6 Hendy, *Studies*, 640–645; more broadly Morrisson, "Byzantine Money," 954–961; C. Morrisson, "Survivance de l'économie monétaire à Byzance (VII^{e}–IX^{e} siècle)," in *Οι σκοτεινοί αιώνες του Βυζαντίου* (*7ος § 9ος αι.*), ed. E. Kountoura-Galakè (Athens: National Hellenic Research Foundation, 2001); and D.M. Metcalf, "Monetary Recession in the Middle Byzantine Period: the Numismatic Evidence," *Numismatic Chronicle* 161 (2001), 111–155. Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 473: "but there did take place a contraction in the monetary economy of the empire."

7 Figure from S. Métivier and V. Prigent, "La circulation monétaire dans la Cappadoce byzantine d'après les collections des musées de Kayseri et de Niğde," *Mélanges Cécile Morrisson* (Paris: Centre de Recherche d'histoire et civilisation byzantines, 2011), 577–618, which provides its commentary. See also the graphs compiled in Morrisson, "Byzantine money," Fig. 6.

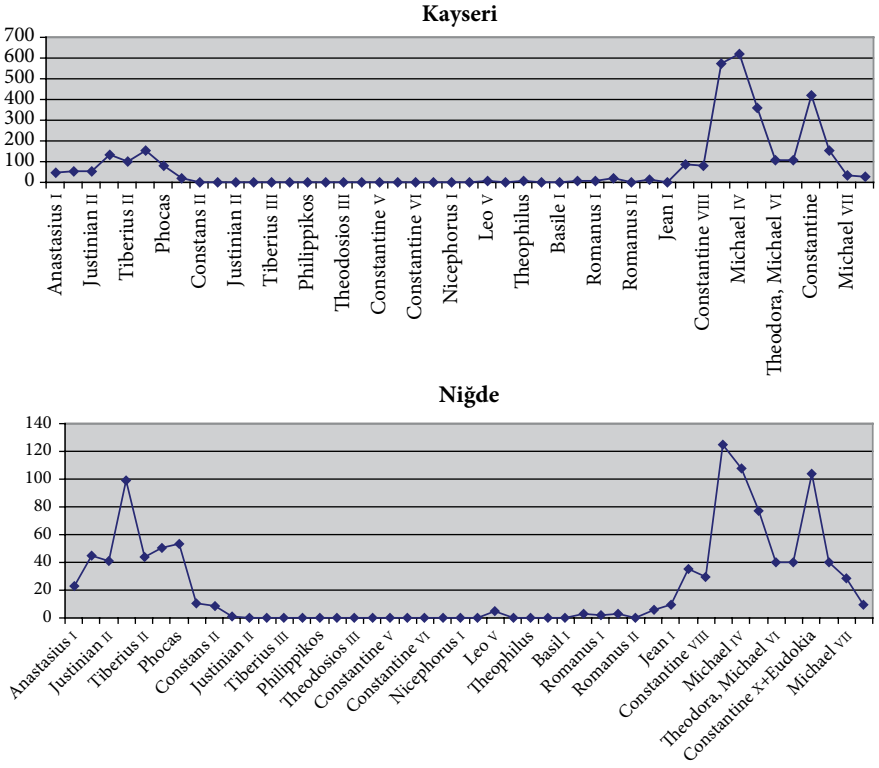

FIGURE 1 *Frequency of preservation of* nummi *by year of reign, Cappadocia*

Some regions, such as the province of Sicily, experienced a completely different pattern,[8] but nevertheless the Cappadocian case remains far more representative of the general development (Fig. 2).[9]

What is significant for our discussion is that this increasing rarity of the currency has been linked to a far-reaching tax reform, although it is not quite possible to discern accurately the point of equilibrium within the relationship

8 C. Morrisson, "La Sicile byzantine: une lueur dans les siècles obscurs," *Quaderni ticinesi di numismatica e antichità classiche* 27 (1998), 307–334. V. Prigent, "La circulation monétaire en Sicile (VI^e–VII^e siècle)," in *The Insular System of Early Byzantine Mediterranean*, ed. D. Michaelides et al. (British Archaelogical Reports, 2013). V. Prigent, "Monnaie et circulation monétaire en Sicile du début du VIII^e siècle à l'avènement de la domination musulmane," in *L'héritage byzantin en Italie (VIII^e–XII^e siècle)*. III. *Les Institutions publiques*, ed. A. Custot-Peters, J.M. Martin and V. Prigent (to be published in the Collection of l'École française of Rome).

9 I will not dwell upon the matter of regional differences, for it goes without saying that in everything that follows we reflect upon an abstract model, liable to variation in both time and space.

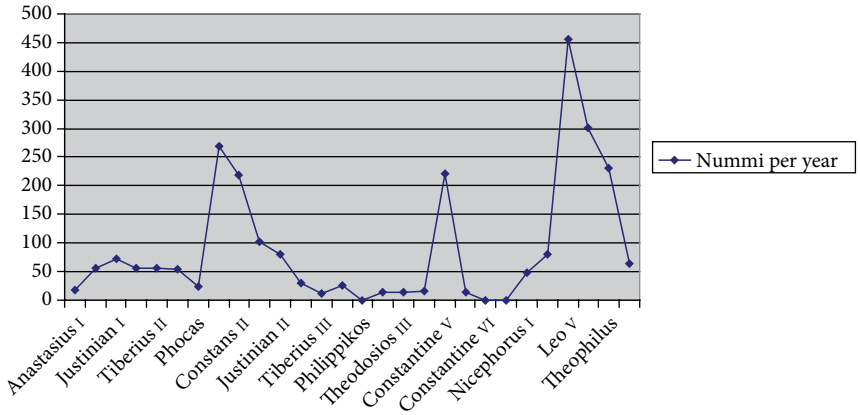

FIGURE 2 Nummi *by year of reign, Sicily*

of cause and effect.[10] One might broadly describe it in this way: following the loss of the rich Eastern provinces, the Byzantine state would have by and large stopped paying its civil servants, with soldiers at the forefront of these, in cash.[11]

10 M. Hendy's ideas, in *Studies in the Byzantine Monetary Economy*, 619–661, remain, whatever later changes were introduced, the basis for the hypotheses put forward by J. Haldon or W. Brandes; beyond the above-mentioned synthesis, see W. Brandes, "Byzantine Cities in the Seventh and Eighth Centuries – Different Sources, Different Histories?" in *The Idea and Ideal of Town between Late Antiquity and the Early Middle Ages*, ed. G.P. Brogiolo and B. Ward-Perkins, Transformation of the Roman World 4 (Leiden: Brill, 1999), 25–57. See how Hendy's positions are reflected in A. Dunn, "The Kommerkiarios, the Apotheke, the Dromos, the Vardarios, and the West," *Byzantine and Modern Greek Studies* 17 (1993), 3–24. Lastly, see Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 465–467, 701–705, with what seem to me to be more nuanced stances; however, they re-emphasise the connection between the activity of the *kommerkiarioi* and a levy in kind (702 and 707).

11 I will not dwell upon the strange notion, recently expressed anew, according to which the state would have paid the army in bronze coins, despite the same authors emphasizing the simultaneous drastic reduction in minting of such coins (Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 470). More generally speaking, financing the army through bronze seems to me impracticable, for even if the state had the necessary quantities of metal at its disposal, the costs of minting in such volumes would have been prohibitive, and the handling of the enormous sums mobilised for the campaigns impossible. I will only cite one quick example: the accounts of the 911 expedition to Crete predicted salaries amounting to at least (and we do not know what proportion of the total number of people the sources relate) 3240 gold pounds of gold. At the rate of the *solidus* in the middle of the seventh century, this would represent over 1200 tonnes of bronze in the shape of 168,500,000 coins. Not very handy, indeed.

Instead, the state would have significantly fallen back upon payments in kind and, consequently, upon tax levies of commodities, managed notably by the famous institution of the *apotheke*, which was itself more or less directly subjected to the *kommerkiarioi*.[12]

This reform would have resulted in the "classical" form of the Byzantine army. Indeed, the army of the *themes* would have originated in the dispersal of the soldiers, repatriated from the lost Eastern provinces, throughout the whole of the territory still under control, the aim being to benefit as directly as possible from a tax levy in kind.[13] The monetary economy would later recover, with one of the high points of this process traditionally situated during the reign of Constantine V, in the third quarter of the eighth century. In the ninth century at the very latest, tax would once again have been levied entirely in gold, without this decision ever again being seriously challenged.[14] Nowadays, this is a widely accepted reconstruction of events. Yet, as we can see, even in this scenario, the episode of levies in kind seems to have pertained to but a relatively short period of time. In fact, I believe that up to a certain point one can even question its very existence, and recently the champions of this theory have not seemed to me so inflexible.[15]

12 For more on this question, refer to the recent Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 682–717, which also asserts the connection between the disappearance of the bronze coins and the affirmation of the *kommerkiarioi* (for example, 690 and 710), and E. Ragia, "The Geography of the Provincial Administration of the Byzantine Empire (ca 600–1200): I.1. The Apothekai of Asia Minor (7th–8th c.)," *Symmeikta* 19 (2009), 195–245, and to the substantial summary of Brandes, *Finanzverwaltung in Krisenzeiten*, 239–426; see also the very important considerations offered in S. Cosentino, *Economia e fiscalità nei "secoli oscuri": in margine alla questione dei kommerkiarioi* (to be published), and V. Prigent, "La Sicile de Constant II: l'apport des sources sigillographiques," in *La Sicile, de Byzance à l'Islam,* ed. A. Nef and V. Prigent (Paris: De Boccard, 2010), 159–166; Prigent, "La circulation monétaire en Sicile." N. Oikonomidès dissociated himself from the outset from the stances of Hendy: N. Oikonomidès, "Silk Trade and Production in Byzantium from the Sixth to the Ninth Century: The Seals of Kommerkiaroi," *Dumbarton Oaks Papers* 40 (1986), 33–53. After the completion of the present text, an important new appraisal appeared: F. Montinaro, "Les premiers commerciaires byzantins", *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 17 (2013), 351–538.

13 See J. Haldon, *Byzantium in the Seventh Century: the Transformation of a Culture* (Cambridge: Cambridge University Press, 1997), 208–253.

14 The turning point is frequently associated with the famous passage in the eighth-century chronicles describing the greed of Constantine V, who would have demanded that taxes be paid in gold, see Oikonomidès, *Fiscalité et exemption fiscale*, 35; Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 474, 487.

15 Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 466, 470, 478–479, 482, even if it is not always easy in this synthesis to distinguish clearly to what period certain of the authors' broad statements apply.

To my understanding, the most important recent evolution has been the challenge to the consistent and systematic character of the *kommerkiarioi*'s intervention.[16]

One must emphasise from the outset that this hypothesis of a profound fiscal reform is primarily based upon the increasing scarcity of bronze coins on Byzantine sites, which itself presupposes a drastic reduction in the minting of such coins. However, as a prelude to any discussion of the phenomenon, it is worth recalling that even Leo IV's issues, as rare as they might be among archaeological finds or even in collections, have been estimated at around 4,000,000 *folles* per annum.[17] Thus even at its nadir the production of bronze was not entirely insubstantial. Yet, beyond this, in order to evaluate properly the undeniable growing scarcity of bronze coins four points must be kept in mind.

Firstly, the contraction of the issues must be linked to the contraction of the population. Thus, for example, if the coins were around three to five times rarer in Constantinople during the course of the famous "dark centuries" than they previously had been,[18] there is also consensus in thinking that from the sixth to the seventh century the urban population probably went from near half a million to something close to 70,000 inhabitants, which is a decrease by a factor of six or seven.[19] Obviously, seen in this context, the fall in the frequency of coin finds no longer carries the same meaning.[20] Clearly, this evolution is much more marked in the provinces, and is an aspect of the problem that should be kept in mind.

16 Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 692.

17 D.M. Metcalf, "How Extensive was the Issue of Folles during the years 775–829?" *Byzantion* 37 (1967), 270–310. The *follis* was the standard bronze coin.

18 Morrisson, "Survivance de l'économie monétaire," 390–391.

19 See, for example, the estimations put forward by P. Magdalino, "Medieval Constantinople: Built Environment and Urban Development," in *Economic History of Byzantium from the Seventh through the Fifteenth Century*, 529–537.

20 The increase in the production in the Amorian era, certainly far more important than the demographic revival, may be explained by the metrological reform that required a broader renewing of the coins in circulation. For more on this Amorian reform, see P. Grierson, *Catalogue of Byzantine Coins in the Dumbarton Oaks Collection and in the Whittemore Collection*, III, *Leo III to Nicephorus III, 717–1081* (henceforth DOC III) (Washington, D.C.: Dumbarton Oaks, 1973), 94–97, 406–408, 412–415; D.M. Metcalf, "The Folles of Michael II and of Theophilus before his Reform," *Hamburger Beiträge zur Numismatik* 21 (1967), 21–34; idem, "The New Bronze Coinage of Theophilus and the Growth of the Balkan Themes," *American Numismatic Society. Museum Notes* 10 (1962), 81–98; idem, "The Reformed Folles of Theophilus: their Styles and Localisation," *American Numismatic Society. Museum Notes* 14 (1968), 121–53.

Secondly, the importance of residuality should be more carefully examined.[21] Even if the scope of the phenomenon is difficult to define, its impact is indisputable, as coins may have remained in circulation for a very long time.[22] Thus, the Mardin hoard, buried towards the end of the thirteenth century, still included a good number of coins from the eleventh, and a sizeable number of Protobyzantine coins.[23] Equally, archaeologists excavating the new route that was established in the seventh century on the site of Naples' silted port discovered coins that predated its construction.[24] This observation also applies to another seventh-century site adjoining the famous deposits of the Crypta Balbi, where excavation is currently under way.[25] On the site of Amorium, Protobyzantine coins represent a sizeable (14%) portion of the findings for the "dark centuries."[26] In Sicily, a treasure-hoard from the end of the tenth or beginning of the eleventh century proves that Muslims were still using Amorian *folles*.[27] In the Peloponnese, coins minted during Antiquity appeared in the tenth- to eleventh-century treasure-hoards, despite abundant contemporary production.[28] Although we do not have a comprehensive study of this phenomenon at our disposal, one could undoubtedly provide countless more such

21 More generally on this topic, see L. Saguì and A. Rovelli, "Residualità, non residualità, continuità di circolazione. Alcuni esempi dalla Crypta Balbi," in *I Materiali residui nello scavo archeologico,* ed. F. Guidobaldi et al., Testi preliminari e atti della tavola rotonda (Rome, 16 March 1996), Collection de l'École française de Rome 249 (Rome: É.F.R., 1998), 173–195.

22 Generally speaking, it is estimated for the late Middle Ages that coins from a given issue would disappear at a rate of 0.1 to 2% per year, see Morrisson, "Byzantine Money," 939. Obviously this rate varied a lot depending on metrological characteristics and the value of the coins.

23 S. Bendall, N.M. Lowick, and P.D. Whitting, *The "Mardin" Hoard* (London: Baldwin and Sons, 1977), 12–13, 15.

24 A. Rovelli, "Naples, ville et atelier monétaire de l'Empire byzantin: l'apport des fouilles récentes," *Mélanges Cécile Morrisson*, 703–707.

25 Information supplied by Alessia Rovelli, responsible for the publication of this material, during a preliminary presentation at the workshop *The Economy of the Western Mediterranean Basin in the 7th Century*, Oxford, 12–13 March 2011.

26 C. Lightfoot, "Byzantine Anatolia: Reassessing the Numismatic Evidence," *Revue numismatique* 158 (2002), 235.

27 L. Travaini, "La monetazione della Sicilia islamica," in *La Sicile à l'époque islamique: questions de méthode et renouvellement récent des problématiques*, ed. A. Nef and A. Molinari, *Mélanges de l'École française de Rome. Moyen Âge* 116-1 (2004), 310.

28 V. Penna, "Η ζωή στις βυζαντινές πόλεις της Πελοποννήσου: Η νομισματική μαρτυρία (8ος 12ος)," in *Μνήμη Martin J. Price* (Athens: Hellenic Numismatic Society, 1996), 269 n. 19.

examples.[29] Yet, evidently, the weaker the production of bronze coins the stronger the residuality, since the supply of new metals always remained very low, and new issues required older coins to be melted again. Another indirect proof of a strong residuality is the sheer volume of copper coins struck from the 9th century onwards: if this production did not use metal from older coins, where did such huge quantities of copper come from?

Thirdly, the development of the relative value of gold and bronze is of paramount importance. Under Constantine IV, the value of the *follis*, the standard bronze coin, in relation to the *solidus*, the standard gold coin, increased by at least four, and probably much more.[30] The drastic reduction in the volume of issues after 668 was thus disproportionate to the drop in value of these issues. It is unfortunately no longer possible to define the evolution of the value of the bronze coin against the gold one after the reign of Constantine IV. However, to my mind, one incontrovertible point needs to be stressed: after the seventh century, the state was able to impose a largely fiduciary value for its bronze coinage, something which had not previously been the case.[31] Indeed, at some point in the course of the "dark centuries," at a date that unfortunately eludes us, the previous Justinianic exchange rate of 288 *folles* to the *solidus* was reinstated.[32] Yet, throughout the ninth century, the weight of the *folles* could be placed a little above 7g, with forty-two coins probably struck from one pound of bronze.[33] In this case, the *solidus* must have been estimated at around seven pounds of bronze, an extraordinarily low value[34] that only makes sense in light

29 See for example the Roman coinage reintroduced in the sixth century, C. Morrisson, "The Re-Use of Obsolete Coins," *Studies in Numismatic Method presented to Philip Grierson* (Cambridge, 1983), 95–111; Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 484, recall that in some Corinth's archeological strata over 50% of the coins are more than fifty years old.

30 The high hypothesis suggests an increase by sixteen, through the quadrupling of both the official value of bronze and the legal weight of the *follis*; P. Grierson, *Catalogue of Byzantine Coins in the Dumbarton Oaks Collection and in the Whittemore Collection*, II, *Heraclius Constantine to Theodosius III, 641–717* (Washington, D.C.: Dumbarton Oaks, 1968), 28–29 (henceforth *DOC* II).

31 *Contra* Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 481 n. 73, which precisely refers back to works bearing upon the Protobyzantine period.

32 Hendy, *Studies in the Byzantine Monetary Economy*, 503–506, suggests the reign of the first Amorian emperors. The exchange rate of 288 *folles* to a *solidus* was in force during the major part of Justinian I's reign, see n. 34.

33 See the table in *DOC* II, 69.

34 In the sixth and seventh century, according to the period, the *solidus* was worth between 16 and 48 bronze pounds, see the table given in C. Morrisson, "Monnaie et prix à Byzance du V^e^ au VII^e^ siècle," in *Hommes et richesses dans l'Empire byzantin, IV^e^–VII^e^ siècle*,

of the introduction of a strong fiduciary component to the copper coin's official value.[35] The highly fluctuating metrology of the specimens also supports this. Indeed, in the course of Leo III's reign, the Constantinople workshop seems to have begun to strike *al marco*, with *folles* of a same class likely to present differences in weight ranging from 1 to 7.[36] This slackening in production norms within a trimetallic system is best explained in the context of bronze coins gaining a strong fiduciary value, guaranteed by the fixed rate of exchange with the *nomisma*. Each of the bronze coins in circulation in the empire took on a new gold-value that was at least double, even possibly triple or more, what it had been under the Heraclian dynasty, which is something that we must take into account in order to analyse properly this aspect of the monetary economy's evolution. The reduction in the number of coins in circulation did not go hand-in-hand with a similar reduction in the total value of coins in circulation. Although the slackening of minting norms would seem to indicate so, we obviously cannot demonstrate that this phenomenon developed already from the eight century.[37] Nevertheless, we must keep in mind the parallel case of the *miliaresion* (the Mesobyzantine period silver coin) created by Leo III with a legal value double that of its metallic value,[38] which clearly shows that such policies were pursued at the time. Lastly, it seems evident that this growing importance of the fiduciary character of coinage is the ideal companion to a drastic reduction in the volume of issues and a growing importance of residual coins in the monetary circuit. Indeed, it so-to-speak trumped the problematic metrological heterogeneity of the bronze coins in circulation.

Réalités byzantines (Paris: P. Lethielleux, 1989), 248, that I prefer over the more recent one supplied in V. Ivanišević, C. Morrisson and V. Popović, *Les trésors monétaires des Balkans et d'Asie Mineure* (*491–713*), Réalités byzantines 13 (Paris: P. Lethielleux, 2006), 51, Table 2, for reasons provided in V. Prigent, "Nouvelle hypothèse à propos des monnaies de bronze à double marque de valeur de l'empereur Constantin IV," in *Puer Apuliae. Mélanges en l'honneur de Jean-Marie Martin*, ed. E. Cuozzo et al., Monographies 34 (Paris: Centre d'histoire et de civilisation de Byzance, 2008), 573.

35 On this fundamental topic, see C. Morrisson, "La monnaie fiduciaire à Byzance ou 'vraie monnaie', 'monnaie fiduciaire' et fausse monnaie à Byzance," *Bulletin de la Société française de Numismatique* 34–10 (1979), 612–616.

36 *DOC* III/1, 69–70, Grierson stresses the difficulty of empirically establishing the average price of the *follis* (70).

37 One might still consider that under Philippikos the metallic value of the coinage remained fundamental since the sixty-one specimens found in the Agora of Athens seem to indicate that a systematic re-minting of *dekanummia* on the half-*folles* of the previous reign took place to bring about a devaluation; Metcalf, "Monetary Recession," 126.

38 Hendy, *Studies in the Byzantine Monetary Economy*, 505.

The fourth point likely to help account for the growing scarcity of bronze coins relates to alterations in the size of the tax-assessment units, to which we shall return a little further on.

Estimating the relevance of the growing scarcity of bronze currency as a clue to the economy's demonetisation requires us to broach a second still more important point than the preceding general reflections, which pertained specifically to bronze issues. Nothing indicates that the gold and bronze issues evolved at the same rhythm; now, given that bronze coins only represented an infinitesimal part of the value of the monetary mass in circulation, postulating a large demonetisation of the state's financing based on the observation of the growing scarcity of bronze coins appears problematic.[39] The Sicilian case is clear here, since the diverging paths of gold and bronze issues is quite obvious. Thus, at the turn of the seventh and eighth centuries, while the bronze issues were at their lowest point, the production of gold remained strong. We will note in passing that the establishment of the *thema*, around 700, was not followed by a continuous fall in monetary production even though the "thematic system" is generally intended as a way to finance the military through allowance in kind and tax-exemption.[40] But what of the central regions of the empire? When considering the bronze coins, the monetary recovery seems to have taken place under the Amorians, after which there is a constant increase in finds until the massive issues of around the 1000 and the first half of the eleventh century.[41] We may now compare this data with the analysis of the Byzantine gold issues of 713 to 976, supplied by F. Füeg. This estimate is as reliable as it can be as it is based upon a broad die-study of the Byzantine coinage.[42]

Figure 3 takes up the results of this study by establishing a median for the number of obverse dies used each year according to the five phases traditionally stressed in the monetary history of the empire: (a) prior to Leo III's ascension; (b) the Isaurian emperors; (c) from Irene to Michael III; (d) the first

39 For more along these lines see the remarks of Metcalf, "Monetary Recession," 117.

40 See the data collected and commented upon by V. Prigent, "La circulation monétaire en Sicile (VI^e–VII^e siècle)."

41 See the presentation by Morrisson, "Byzantine Money," 954–952; for the peak in monetary production linked to the introduction of the anonymous type A *follis* at the turn of the tenth to eleventh century, see the seminal study of V. Ivanišević, "Interpretation and Dating of the Folles of Basil II and Constantine VIII – the Class A2," *Zbornik radova vizantološkog instituta* 27/28 (1989), 19–42.

42 F. Füeg, *Corpus of the Nomismata from Anastasius II to John I in Constantinople 713–976: Structure of the Issues, Corpus of Coin Finds, Contribution to the Iconographic and Monetary History* (Lancaster, PA: Classical Numismatic Group, 2007).

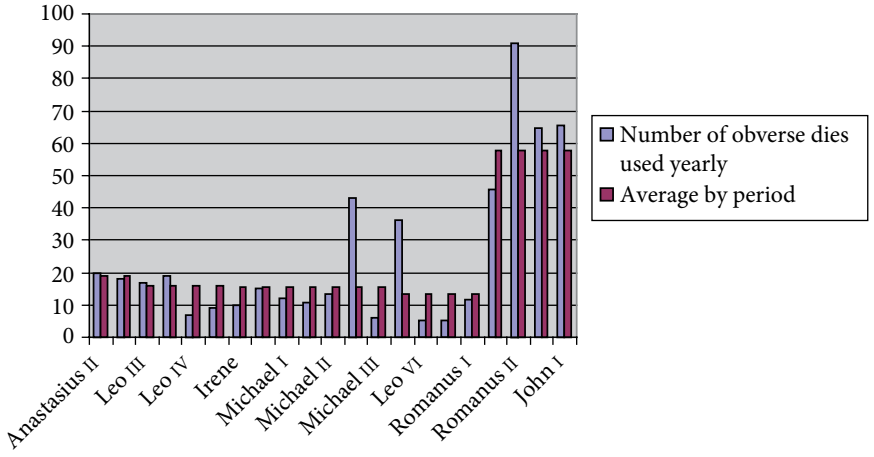

FIGURE 3 *Annual number of dies used by major phase*

Macedonians; (e) the second half of the tenth century. It is manifest from the graph that, contrary to what is commonly thought, nothing very substantial took place between the start of the eighth century and the second half of the tenth century. The rhythms were much more irregular in the ninth to tenth centuries, but in the long run the quantities issued hardly varied, and in fact between 733 and 944 we even witness a very slight reduction of the production of gold coins.[43] As a matter of fact, the annual issues of the first Macedonian era (867–944) only represent 82% of the Isaurian annual issues.[44] The life-cycle of the coins, that is to say the rhythm of recycling, does not necessarily come into play to distort the interpretation, for it does not seem to vary in a significant way over this period.[45]

43 To compare exclusively the reign of Theophilos with that of Constantine V, as was recently undertaken (Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 469), is not to my mind the best way of proceeding, for the high issues of the first reign were followed by a far longer slack period. The same applies to the peak under Basil I followed by the tiny output of the mint under Leo VI.

44 With an average of 13.23 annual coins against 16.08.

45 Morrisson, "Byzantine Money," 938, mentions a life-cycle of sixty to eighty years for Constantinople's coinage between the eighth and the fourteenth centuries. There are some occasional examples of large scale recycling that we may conceive to have been motivated by political considerations. Thus, Basil I's strong issues could reflect a recycling of the Amorian coins, notably that of Michael III. One might also note that contrary to what is inferred from the written sources, Constantine V's reign did not really constitute a turning point (19 coins per year against 16.7 under his father, 18 under Theodosios III and

Thus two points clearly emerge: (a) as in Sicily, we witness in Constantinople a distancing between the rhythms of gold and bronze production; (b) between the period for which we usually postulate the existence of taxation in kind and that for which we accept taxation in gold, there was no perceptible difference in the scale of the gold issues. And yet, if the state was not levying gold, or only in reduced proportions, striking coins would require an endlessly renewed supply of the metal, in huge quantities, which was certainly not the case. Indeed, thanks to trace elements such as platinoids, it is to an extent possible to trace the renewal of the metallic stock used in minting. Now, this study indicates that for the period we are investigating, the Byzantine gold stock only grew by 0.14% per year,[46] which must only just have covered the definitive losses and hoarding. A last important point to mention is the key role old coins played in the operation of the monetary system. Despite being known to posterity as an emperor who spent lavishly,[47] Michael III's reign only saw very low levels of minting.[48] This case illustrates very well the fact that the new issues only reflected a reduced part of the imperial budget, and that the coinage of previous reigns certainly constituted the major part of the coins that went into the imperial coffers. The idea that we may have of the value of long-term monetary production (near 400,000 *solidi* annually?)[49] follows along the same lines, for this production certainly represented but a relatively limited part of the state's annual budget.[50] Furthermore, these high levels of production go hand in hand with an extended age structure of known gold hoards, which hints towards considerable quantities of gold coins being in circulation.[51] We should

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20 under Anastasius II). It is, however, possible that the emperor should have further siphoned off gold coins without re-minting them.

46 Morrisson, "Byzantine Money," 940–941. There was then a clear acceleration, resulting in a 0.4% yearly increase over the whole of the Middle Ages.

47 P. Karlin-Hayter, "Michael III and Money," *Byzantinoslavica* 50 (1989), 1–8.

48 An average of 5.88 coins per year; the same observation applies for Sicily, see Prigent, "Monnaie et circulation monétaire."

49 By considering an average of 20 annual obverse dies and a factor of 20,000 coins, inferior to that suggested by Füeg, *Corpus of the Nomismata*, 161–162. The passage from the number of coins used to that of the number of those minted is an issue of the utmost complexity.

50 The empire's budget during the Dark Ages can only be the object of the proverbial "educated guess," ranging between 1.7 million around 750 and 3 million at the beginning of the Macedonian period; see the figures gathered in Morrisson, "Byzantine Money," 941 and W. Treadgold, *The Byzantine State Finances in the Eighth and Ninth Centuries* (Boulder, CO: East European Monographs, 1982), n. 121.

51 For the age structure of the Mesobyzantine treasures, see the comments of Metcalf, "Monetary Recession," 120–121, and Füeg, *Corpus of the Nomismata*, 153.

furthermore keep in mind such importance of old coins in order to analyse the significance of the contraction in bronze issues, for here too the system was capable of functioning with old coins.

I will conclude with respect to monetary data by recalling that a key point also significantly escapes us: the role played by the silver coinage, with its intermediary position within the monetary system determining its quasi-absence as much in treasure-hoards as in isolated findings.[52] Yet, it certainly played an essential role and may also serve to explain the growing scarcity of bronze from the reign of Leo III.[53] I merely emphasise here that the only province in which we do not observe a growing scarcity of bronze, Sicily, was also the only one for which silver was not minted.[54] In Italy, during the long phase of emancipation from imperial authority, we also note a transition from copper to silver coinage that can undoubtedly be explained by the difference in production costs.[55] It does seem that, despite leaving hardly any traces in our archeological record, silver coins played an essential role in intermediary transactions, thereby reducing the demand for bronze coins.

Beyond the purely monetary questions, we must also challenge the role played by the *kommerkiarioi*, which constitutes the pivot of the current generally accepted reconstruction.[56] When examining the chronology of their

52 Morrisson, "Survivance de l'économie monétaire," 390–391.

53 Thus the question of the role of silver in the balance of the monetary and fiscal system is not considered in Brubaker and Haldon, *Byzantium in the Iconoclast Era*.

54 Prigent, "Monnaie et circulation monétaire en Sicile du début du VIII^e siècle à l'avènement de la domination musulman."

55 On the increased role of small silver coins in Italy, see J.N. Barrandon and C. Morrisson, "La trouvaille de monnaies d'argent byzantines de Rome (VII^e–VIII^e siècle): analyses et chronologie," *RN* 6th series 30 (1988), 149–165. A. Rovelli, "Emissione e uso della moneta: le testimonianze scritte e archeologiche," in *Roma nell'Alto Medioevo* (27 April–1 May 2000), Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo, 48-2 (Spoleto, 2001), 821–852. A. Rovelli, "La moneta dell'Italia Longobarda: aspetti e problemi," *Visigoti e Longobardi,* ed. J. Arce and P. Delogu, Atti del seminario, Roma 28–29 avril 1997 (Florence, 2001), 351–370. E.A. Arslan, "La moneta in argento dei re longobardi. Un'emissione inedita di Ariperto I," *Quaderni ticinesi di numismatica e antichità classiche* 31 (2002), 327–337. The tiny silver coins common to both Rome and the Lombards must have been more easily produced than the *folles*, as the diameter of blanks played a role in the wearing out of the dies. F. Delamare, P. Montmitonnet and C. Morrisson, "Une approche mécanique de la frappe des monnaies: application à l'étude de la forme du solidus byzantin," *Revue numismatique* 26 (1984), 25–27.

56 The once extreme positions formulated seem to me to have been markedly "softened" in their latest formulation, Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 682–717.

emergence, one distinguishes four phases:[57] in Africa, mainly during the years 620–647;[58] in Sicily, in the mid-seventh century;[59] in the East, first in the 650s, and then, under Constantine IV, significantly after 673.[60] Yet these occasions correspond to a phase of increase in monetary production in Carthage,[61] Catania[62] and Constantinople.[63] It is therefore theoretically difficult to make the *kommerkiarioi* the central figure of a system of taxation in kind. This theory was put forward in response to the supposed collapse of the monetary economy, but as we have just seen this last proposition is increasingly difficult to defend. On the contrary, I would argue that we should admit that the *kommerkiarioi* managed vast operations of monetised public purchases.[64] Indeed, the equivalence found in lexicons between *synônê* and *kommerkion* on the one hand, and the chronological link between the development of the *kommerkiarioi* and the rhythm of monetary issues on the other, lead me to conclude that the Heraclian *synônê* followed the classic model of public purchases paid for in kind.[65] An Egyptian papyrus furthermore testifies to such a procedure towards

57 A list of dated seals of *kommerkiarioi* can be found in the appendix III of Brandes, *Finanzverwaltung in Krisenzeiten*. New specimens do not alter the picture offered by this corpus in any definite way.

58 C. Morrisson and W. Seibt, "Sceaux de commerciaire byzantins du VII^e siècle trouvés à Carthage," *Revue numismatique* 24 (1982), 222–240.

59 V. Prigent, "La Sicile de Constant II: l'apport des sources sigillographiques," in *La Sicile, de Byzance à l'Islam*, ed. A. Nef and V. Prigent (Paris: De Boccard, 2010), 157–187.

60 For more on this point, Brandes, *Finanzverwaltung in Krisenzeiten*, 312–323.

61 See, despite some problems, H. Ben Slimène Ben Abbès, "La production de la monnaie d'or en Afrique byzantine au VII^e siècle: étude statistique," in *L'Africa romana*, ed. J. González et al., 4 vols (Rome: Carocci, 2008), 1151–1164.

62 Under Constans II, the Sicilian mint resumed its activity, V. Prigent, "La circulation monétaire en Sicile (VI^e–VII^e siècle)," 9–14. An ongoing study of the coins shows clearly that the gold coin production took off as from 650.

63 See the graph based on hoards in Ivanišević, Morrisson and Popović, *Les trésors monétaires*, 46.

64 In this way, this office would take place harmoniously alongside those of *anthypatoi* and *eparchoi tôn thematôn*, to which is also ascribed a role in the levying of tax in kind or in the requisitions; Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 671–678, 712–713. I must say that I have some difficulty in grasping how these authors visualise the division of roles between the two functions.

65 On this essential testimony, Brandes, *Finanzverwaltung in Krisenzeiten*, 319. On the previous development of the *synônê*, J. Haldon, "Synônê: Re-considering a Problematic Term of Middle Byzantine Fiscal Administration," *Byzantine and Modern Greek Studies* 18 (1994), 116–153 and *contra* N. Oikonomidès, *Fiscalité et exemption fiscale*, 70–72.

the end of Heraclius' reign.[66] I see in the *kommerkiarios* the depositary of public funds which enabled him to carry out the state's necessary purchases, following a model close to the one established in Gothic Italy, precisely as the result of two converging developments, which can also be identified in the empire from the sixth century: the disappearance of the civic *curia*, and a trend towards an increased monetisation of tax.[67] In this context, one might also better understand how these *kommerkiarioi* might have descended from administrators of frontier trading posts and have evolved towards being responsible for a tax on transactions in the following period.[68] Whatever may be the case for this latter point, our aim here is not to reject the theory that suggests a connection between the emergence of the *kommerkiarioi* and the modifications that affected military logistics,[69] although in my opinion this connection did not occur at the level of tax collection itself.[70] Thus, paradoxically, to me the *kommerkiarioi* stand more as an institution stimulating monetary circulation, as they injected public capital into local economies. Emphasis has been laid both upon the tendency towards a concentration of the *basilika kommerkia* in the neighbouring regions of Constantinople, and upon the predominance of this

66 P. Lond. I 113 10 (222) = W. Chr. 8; see the commentary in A. Papaconstantinou, "Administering the Early Arab Empire: Insights from the Papyri," in *Money, Exchange and the Economy in the First Century of Islam*, ed. J. Haldon (Aldershot: Ashgate, 2008), 65–67.

67 This theory also allows us to understand the development of the traditional *coemptio* towards an ordinary tax. For the Gothic system, see the excellent D. Vera, "Dalla liturgia al contratto: Cassiodoro, Variae, x, 28 e il tramonto della città curiale," in *Between Taxation and Rent. Fiscal Problems from Late Antiquity to Early Middle Ages = Entre el impuesto y la renta: problemas de la fiscalidad tardoantigua y altomedieval*, ed. P.C. Díaz and I.M. Viso, Munera 32 (Bari: Edipuglia, 2011), 51–70.

68 In this hypothesis, there is no more difficulty in attributing them also a role in the purchase of silk cocoons. The key point was that they enjoyed a position of monopsony, which was likely to affect a more or less wide range of products.

69 A point in Hendy's theory considerably reinforced by the fact that the first mentions of the Mesobyzantine military districts, on the seals of the eight-century *kommerkiarioi*, define them not as *themata* but as *strategia*; see C. Zuckerman, "Learning from the Enemy and More: Studies in 'Dark Centuries' Byzantium," *Millenium* 1 (2006), 125–134.

70 In the scenario put forward here, the *kommerkiarioi* did in fact use the product of the tax levy, possibly for the supplying of the armies. This is a far more flexible system than the one involving a levy in kind with the subsequent obligation of organising the transfer of commodities to each unit, since the geography of the cantonment, which had to remain strategic, and that of the levy, based on economic prosperity, could only very imperfectly coincide.

institution in the Balkans throughout the course of the eighth century.[71] It has been interpreted as a consequence of the need to raise taxes in kind in areas of weak monetisation. But if this were the case, how to justify the frequency of seals mentioning *basilika kommerkia* active in the developed areas of the capital's Micrasiatic hinterland? And why were the *kommerkiarioi* then absent in the East, when the study of monetary circulation in the Eastern provinces reveals as acute a deficiency in coinage as in the Balkans?[72] I would suggest that this paradox is easily overcome if we consider the *kommerkiarioi* as responsible for the state's spending rather than its tax levies, as in this instance the local level of the monetary economy had no impact on their activity. As for the chronological coincidence between the disappearance of the *basilika kommerkia* and the resurgence of high level of copper coin production towards 820, which has been put forward to strengthen the link between this institution and the economy's demonetisation, I find it perfectly plausible that the connection should rather be established between the end of the *basilika kommerkia* and the affirmation of the role of the thematic protonotaries responsible for public spending and supplying the troops in the first decades of the ninth century.[73] One institution replaced the other in its essential task, thus instigating its disappearance.

Therefore, the brief episode of taxation in kind that we attribute to the empire may not be, and I would even say probably is not, much more than a chimera. Byzantine tax seems throughout this period to have essentially been monetised. In light of the substantial coinage attributed to the Heraclides and of the new conception we may now have of the *kommerkiarioi*, I even wonder whether we should not contemplate that the Heraclides may have still further emphasised the imperial state's tendency, discernible as early as the previous century, to demand tax payment increasingly in cash.[74] This development

71 For more on this redeployment of the *kommerkiarioi*, see Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 697–703, 710.

72 See the data collected in Métivier and Prigent, "La circulation monétaire dans la Cappadoce byzantine."

73 See Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 679–682; this shift is mentioned by the authors (p. 705 and p. 713), who do not contemplate the hypothesis proposed here as they postulate a transition between the *prôtonotarioi* on one hand and *anthypatoi* and *eparchoi tôn thematôn* on the other. Once again, if we stop linking the *kommerkiarioi* to the fiscal levy, the problem disappears, especially if we date the incorporation of the *synônè* into the regular fiscality to the same period, something which the sources do not exclude.

74 C. Zuckerman, *Du village à l'empire. Autour du registre fiscal d'Aphroditô* (*525/526*), Monographies 16 (Paris: Centre de recherche d'histoire et de civilisation de Byzance,

would have entailed a reform in logistics, with increased purchases of commodities from private individuals.[75] One ought to bear in mind that a continuous increase of taxation in kind would necessarily have had consequences upon the public infrastructures for the storage and transfer of the tax product. Yet it is clear that in the seventh and eighth centuries the large public granaries were disappearing even in Constantinople.[76] As for the public transport system, we will recall that as from the reign of Justinian I, the *cursus publicum* started being dismantled in Asia Minor.[77] Now we must keep in mind that the public *horrea* were also located in the *mansiones* of this institution.[78] It is noteworthy that this development took place against the background of an increasing monetisation of the land tax.[79] The Byzantine state of the eighth to tenth centuries did not lose all its authority in the field,[80] but there was nothing left

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2004), 189: the *kanonika* represent around 25% of the tax burden in 525–526, around 50% in 537–538 and reach 68.2–75.6% between 545 and 551.

75 Ivanišević, Morrisson and VPopović, *Les trésors monétaires*, 46. Of course, the seventh-century crisis stimulated hoarding and recent coins make naturally for a good proportion of any given hoard, but the peak on the graph under the first Heraclian emperors is so clear that it must also refer to an extremely strong production.

76 V. Prigent, "Le stockage du grain dans le monde byzantin (VII^{e}–XII^{e} siècle)," *Mélanges de l'École française de Rome. Moyen Âge*, 120–121 (2008), 7–37, with the main bibliographical elements.

77 Commentary of pertinent excerpts of Jean Lydus and Procopius on this subject in Hendy, *Studies in the Byzantine Monetary Economy*, 295. The disintegration of the *cursus clabularius* happened even earlier in the East, J.M. Carrié, "Cursus Publicus," in *Late Antiquity: A Guide to the Post-classical World*, ed. G. Bowersock, P. Brown and O. Grabar (Cambridge, MA: Harvard University Press, 1999), 402–403. For a general introduction to the system, A.H.M. Jones, *The Later Roman Empire: A Social, Economic and Administrative Survey (284–602)* (Oxford: Blackwell, 1964), 830–804; and L. Di Paola, *Viaggi, trasporti, istituzioni. Studi sul* cursus publicus (Messina: Dipartimento di Scienze dell' Antichitá dell' Universitá degli Studi di Messina, 1999).

78 Hendy, *Studies in the Byzantine Monetary Economy*, 605.

79 For more on this chronological coincidence, see Vera, "Dalla liturgia al contratto," comparing pp. 64 and 66, who also quotes Constantin Zuckerman's key sentence: "on ne retrouve plus, en Égypte, ni le personnel liturgique ni les entrepôts, et la cause en est connue: c'est l'adération croissante des prestations annonaires" (Zuckerman, *Du village à l'empire*, 143).

80 One obviously recalls the drome, very certainly reduced to the *oxys dromos*, the "accelerated" service that did not deal with bulky cargo (see Hendy, *Studies in the Byzantine Monetary Economy*, 608 n. 238; A. Dunn, *The Kommerkiarios*; and Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 705–709, as well as the following note), but also the freight system by requisition of private ships that we know of through the tenth-century correspondence of Ignatios the Deacon; *The Correspondence of Ignatios the Deacon*, text, transl. and comment by St. Efthymiadis and C. Mango, Corpus Fontium Historiae Byzantinae 39.

reminiscent of the system that had underpinned the *annona* of the Late Roman Empire. It seems particularly significant that the Mesobyzantine land-tax, which combined a multitude of small taxes,[81] should no longer include any element specifically linked to the upholding of such a system, such as the late Roman *primipilum* or the taxes that financed the freight of Egyptian wheat.[82] The combination of a widely monetised tax and a systematic practice of *coemptio* can perfectly explain these developments.

There are, of course, exceptions to the suggested outline, and the economic development of certain areas could preclude a levy in gold, but the ideal scenario was certainly taxation in cash. This is not as obvious a conclusion as it may seem, for this option opens the door to a sizeable number of problems. We will return to this point and will then need to address the third form of tax product: work.

2 The Tax Base

The second aspect of the problem presented by the balancing of the tax system is how tax was assessed. It also includes two additional questions: on what did tax bear, and how was the amount to levy determined? With respect to the first problem, to simplify matters one might say that two main solutions are possible: either the product or the tool of production might be taxed. So one might demand a portion of the fruit of the land, thus taxing the product,[83] or link the tax to the value of the land, thus taxing the tool of production. The Byzantine

Series Washingtoniensis/Dumbarton Oaks texts, 11 (Washington, D.C., 1997), no. 21. On this passage, see also Brandes, *Finanzverwaltung in Krisenzeiten*, 193–194, whose interpretation is a little extreme to my mind.

81 No such thing in the vast synthesis offered by Oikonomidès, *Fiscalité et exemption fiscale*.

82 The last occurrence of such a tax seems to me the "gold of the mules" mentioned by Gregory the Great (*Registrum Epistularum sancti Gregorii Magni,* ed. D. Norberg, Corpus Christianorum, series latina CXL and CXLA (Turnhout: Brepols, 1982)), I, 42; and my commentary in V. Prigent, *La Sicile byzantine* (*VI^e^–X^e^ siècle*) (PhD Université Paris-La Sorbonne, 2006), 1092–1094. Byzantium had at its disposal *exkoussatoi* from the drome (Oikonomidès, *Fiscalité et exemption fiscale*, 166) but this was not the same as an empire-wide tax. For the *primipilum*, J.M. Carrié, "«Primipilaires» et taxe du «primipilon» à la lumière de la documentation papyrologique," in *Actes du XV^e^ congrès international de papyrologie* (*Bruxelles, 1977*), IV (Brussels, 1979), 156–176; also Zuckerman, *Du village à l'empire*, 179; J.L. Fournet and J. Gascou, "Moines pachômiens et batellerie," *Études alexandrines* 8 (2002), 23–45.

83 For example, payment of a portion of the harvest was one of the forms listed by al-Māwardī in the Abbassid era for the payment of the *kharadj*; F. Lokkegaard, *Islamic Taxation in the Classical Period* (Copenhagen: Branner og Korch, 1950), 109.

authorities opted for the second solution, thus keeping in line with the choices of the Late Roman Empire.[84] The amount of the tax was based on an estimate of the value of the land reckoned upon its extension and quality.[85] The other productive components of the estate, the animals and the men themselves (that is the workforce),[86] were also reckoned, but it was the land that remained essential.[87] A growing number of surtaxes were added to this basic tax, but in principle their sum was always indexed to that of the base tax.[88] Tax was thus in the first instance reckoned on the basis of the land's recognised value, hence the tax payer's strategies to align his lands with his capacity to exploit them.[89] We will look into the implications of this choice a little further on.

The second aspect in the matter of establishing tax is the well-known transition from distributive taxation to the so-called "impôt de quotité," that is an *ad valorem* tax calculated on the value of the patrimony of each tax-payer. This transition, if we follow Nicolas Oikonomidès' conclusions, would have taken place towards the end of the seventh century.[90] According to this author, the Later Roman Empire was characterised by distributive taxation: the state fixed the total sum it needed and this amount was distributed among the total number of fiscal units, each taxpayer thus being responsible for a varying number (or a fraction) of these units.[91] The actual level of taxation could thus legally

84 For the establishment of the late Roman tax system under the Tetrarchs, J.M. Carrié, "Diocletien et la fiscalité," *Antiquité tardive* 2 (1994), 33–64.

85 Oikonomidès, *Fiscalité et exemption fiscale*, 49–53.

86 Ibid., 67–76.

87 Recently Constantin Zuckerman has nevertheless pleaded in favour of a preponderant role for the poll-tax in the second half the seventh century (Zuckerman, "Learning from the Enemy," 79–135).

88 Oikonomidès, *Fiscalité et exemption fiscale*, 76–80. I forebear to dwell on a few additional taxes the importance of which grew in the tenth and eleventh centuries.

89 The simplest of these strategies was to donate to the Church lands for which one was fiscally responsible, but which could not be tilled. This is the rationale of Nicephorus Phocas' law regulating donations of land lacking means of exploitation: *Les novelles des Macédoniens concernant la terre et les stratiotes*, ed. N. Svoronos (Athens: Fondation culturelle de la Banque nationale, 1994), 151–161, ld.; *The Land Legislation of the Macedonian Emperors*, trans. and commentary E. McGeer, Mediaeval Sources in Translation 38 (Toronto: Pontifical Institute of Mediaeval Studies, 2000), 92–96.

90 N. Oikonomidès, "De l'impôt de distribution à l'impôt de quotité à propos du premier cadastre byzantin," *Zbornik radova vizantološkog instituta* 26 (1987), 9–19; similarly, R. Bondoux et al., *Géométries du fisc byzantin*, Réalités byzantines, 4 (Paris: Lethielleux, 1991), 19–20, who especially emphasise the continuities.

91 For the very beginning of the Muslim period, see the fiscal *katagraphai* that established individual taxes in relation to two superior global amounts; J. Gascou, "Notes critiques:

vary from year to year. Conversely, the Mesobyzantine system was first of all characterised by fixing everyone's fiscal capacity (based primarily on the value of the land held, as we have seen previously) and then, through the application of a fixed tax-scale, calculating an amount which would always remain proportional to the tax payer's means. In practice, the Byzantine level of taxation seems to have normally been at 4.16%,[92] to which surtaxes were added up to a theoretical maximum of 5.8%.[93]

According to Nicolas Oikonomidès, this "impôt de quotité" (*ad valorem* tax) would be fairer and more effective.[94] In truth, I find the distinction between the two systems in part exaggerated: the distribution of the tax demands in the first system relied upon the allocation of base units which were drawn from an initial estimate of the individuals' capacity to contribute.[95] Furthermore, Egyptian sources indicate that the level of taxation was relatively stable. Conversely, in the Mesobyzantine fiscal system, the principle of tax solidarity, under which an individual was obliged to pay for his neighbour if the latter ever went into bankruptcy, was a very significant limit to any scrupulous alignment of contributive capacities and fiscal demands, and thus reintroduced a sizeable element of "distribution." This system's role in the disintegration of village communes in the tenth century clearly shows its limits.[96] To my mind there was not either any greater "justice" inherent in the Mesobyzantine system, for both tax scales and units of land measurement could change, and in so doing bring about increased tax pressure, just as distributive taxation was capable of doing, but more directly.[97] From the

P. Prag. I 87, P. Mon. Apollo 27, P. Stras. VII 660," *Zeitschrift für Papyrologie und Epigraphik* 177 (2011), 248–253.

92 Oikonomidès, *Fiscalité et exemption fiscale*, 49–50. The real estate tax corresponded to 1/24th of the estimated value of the land and the work force.

93 It is difficult to estimate the exact weight of the different surtaxes, see the graph supplied in C. Morrisson, "La Logarikè: réforme monétaire et réforme fiscale sous Alexis Ier Comnène," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 7 (1979), 463.

94 Oikonomidès, *Fiscalité et exemption fiscale*, 26, 41, frames the adoption of the so-called impôt de quotité (*ad valorem* tax) in the context of the "moral reforms" of the Isaurian emperors.

95 The same objection can be found in Zuckerman, *Du village à l'empire*, 117–19. See the description of the setting up of the system in Carrié, "Diocletien et la fiscalité," 33–64.

96 The social and economic consequences of this mechanism are perfectly described in M. Kaplan, *Les hommes et la terre à Byzance du VIe au XIe siècle: propriété et exploitation du sol*, Byzantina Sorbonensia 10 (Paris: Publications de la Sorbonne, 1992), 388–393.

97 The information supplied along these lines in The Marciana Treatise shows that one same area of land could in the end vary by 30%, because the official measurement unit, the

perspective of both efficiency and "morality," both systems were equal to each other; what mattered was with what frequency the individuals' capacity to contribute was checked.

The underlying logic of the undeniable transition from one system to the other thus remains an open question. I would personally like to suggest a point that I consider essential, and which I do not believe has yet been emphasised. When the process of estimating the taxable assets proved impossible to carry out as a whole over a relatively short period of time, as happened under the Tetrarchs, the "cascading" system of distribution was not really practical. Furthermore, whenever political stability could not be guaranteed and the state could no longer predict the number of basic tax-paying units it could rely on, the system became more or less unworkable. On the other hand, in addition to palliating this last problem, the *ad valorem* tax enabled the compiling of land registers in limited and specific areas, since it was now possible to fix the total sums owed by the newly registered regions, whatever its size, without worrying about the total sum that should be levied right across the empire. It was therefore possible to progress by the accumulation of such partial land registers, "a macchia d'olio e macchia di leopardo."[98] Indeed, as it is highly unlikely that the seventh- to ninth-century Byzantine state would at any point whatsoever have been capable of carrying out a comprehensive land registration of the empire before its borders were truly stabilised, this

schoinion, varied in length according to the fertility of the empire's diverse regions. The point to retain is that these differences were not the result of heterogenous regional metrological traditions, but of the administration's deliberate decisions. In the same way, tax relief could take the shape of a lengthening of the unit of measurement, safeguarding the intangibility of the tax scale at 1/24th of the value of the land. See the analysis of these passages in Oikonomidès, *Fiscalité et exemption fiscale*, 51. For a general presentation of the technical problems implied by the necessity of estimating the areas chargeable to each taxpayer, see Bondoux et al. *Géométries du fisc byzantin*. This *a priori* complex mechanism was probably developed to avoid having to modify the tax scales for all the numerous surtaxes linked to the basic land-tax. We find that an identical logic also underpinned the fixing of the price of bread, the factor likely to fluctuate being the size of the loaf rather than its monetary price.

98 This beautiful saying was used by Domenico Vera with regard to the extension of the great senatorial lands during the Late Empire; it conveys the dual idea of both the slow spreading of an oil stain and the multiplicity of spots on the leopard skin, multiple stains spreading to the point of joining each other, resulting in a unified setting at the end of the process; D. Vera, "Aristocrazia romana ed economie provinciali nell'Italia tardoantica: il caso siciliano," *Quaderni catanesi di studi classici e medievali* 10 (1988), 149.

may well be how the *ad valorem* tax was established. Of course, this is nothing but a theory, but it goes some way towards explaining the problem posed by the seals of the first known *dioikētai*. These Mesobyzantine tax collectors seem to have operated at all sorts of levels, from towns to entire province, without any real hierarchy.[99] Now, this would make sense if their action developed in bouts, progressively registering all the lands through occasional operations affecting areas of various sizes. Finally, it is not obvious to me that as from the eighth century these civil servants really held the tax collecting roles normally ascribed to them on the strength of the *Klētorologion* of Philotheos (899).[100] Indeed, we should take greater account of the implications of a pontifical letter establishing a direct equivalence between the *dioikētēs* and the *dispositor*.[101] Written not so long after the seizing of the Sicilian pontifical patrimonies, the letter cannot be dismissed on the basis that the popes would be ignorant of contemporary imperial administrative practices.[102] We may thus emphasise that the term *dispositor* does not refer to a mere tax collector, but to the one responsible for the *dispositio*, a document setting out the bases of the calculations of the tax payers' obligations.[103] The term *dioikētēs* is also mentioned by John Lydos to designate the prefecture *scriniarii*, responsible for estimating the contributive capacity of the provinces and not for tax collection.[104] Accordingly, the *dioikētēs* seems at first to have been more the one

99 A summary of the problem can be found in Brandes, *Finanzverwaltung in Krisenzeiten*, 205–225. Recently was published an important seal witnessing an early evolution of the military command ultimately called *themata* towards fiscal districts; it mentions the τῶν βασιλικῶν κομμερκίων τῆς διοικήσεως Ἑλλάδος. See C. Stavrakos, *Die byzantinischen Bleisiegel der Sammlung Savvas Kophopoulos. Eine Siegelsammlung auf der Insel Lesbos* I, Βυζάντιος. Studies in Byzantine History and Civilization, 1 (Turnhout: Brepols, 2010) 1.4.

100 Traditionally, N. Oikonomidès, *Les listes de préséance byzantines des IX^e^ et X^e^ siècles*, Le monde Byzantin 4 (Paris: Editions du Centre National de la Recherche Scientifique, 1972), 313.

101 *Codex Carolinus*, ed. W. Gundlach, MGH Epistulae III, Epistolae Merovingici et Karolini aevi (Berlin, 1892), no. 82, 616, l. 12: «*cum diucitin, quod Latine dispositor Siciliae dicitur*».

102 On the chronology of this event, see V. Prigent, "Les empereurs isauriens et la confiscation des patrimoines pontificaux d'Italie du Sud," *Mélanges de l'École française de Rome. Moyen Âge*, 116-2 (2004), 557–594.

103 W. Goffart, "Merovingian Polyptychs. Reflections on Two Recent Publications," *Francia* 9 (1981), 71–73.

104 For more on this point see the reflections of Brandes, *Finanzverwaltung in Krizenzeiten*, 205, who does not compare this passage to the pontifical letter.

responsible for the establishment of tax obligations than its collector. This is something to which we will come back.

3 The Levying Framework

The third important point to investigate relates to the nature of the fiscal district and the staff responsible for the levying. If we agree to generalise, in the first aspect, between the sixth and eleventh century the empire went through three phases. Initially, the normal framework for levying remained the city, in line with Roman Empire tradition.[105] However, over the course of the seventh century, and certainly in the eighth, the village seems to have become the tax framework of reference, even if the reasons for this development are not fully evident to us.[106] Of course, the decline of the towns played a role in this, but this very decline was in part linked to the shift in the tax system's centre of gravity, which suspended the desperate policies in defence of the municipal *curia* traditionally responsible for tax operations.[107] In the eighth century, the *chôrion*, identified with the village, had truly become the essential pivot of the system, as testified by the *Agrarian Code*.[108] Until the tenth century, the main tax document of reference throughout the empire has a geographical focus,

105 See the traditional exposition in Jones, *The Later Roman Empire*, 456–457, with the additions provided in R. Delmaire, "Cités et fiscalité au Bas-Empire. À propos du rôle des curiales dans la levée des impôts," in *La fin de la cité antique et le début de la cité médiévale de la fin du III^e siècle à l'avènement de Charlemagne: Actes du colloque tenu à l'Université de Paris x-Nanterre (1–3 avril 1993)*, ed. C. Lepelley (Bari: Edipuglia, 1996), 59–70.

106 W. Brandes and J. Haldon, "Towns, Tax and Transformation: State, Cities and their Hinterlands in the East Roman World, c. 500–800," in *Towns and their Territories between Late Antiquity and the Early Middle Ages*, ed. G.P. Brogiolo, N. Christie and N. Gauthier, Transformation of the Roman World 9 (Leiden: Brill, 2000), 141–172; also, M. Whittow, "Recent Research on the Late-Antique City in Asia Minor: the Second Half of the 6th c. Revisited," in *Recent Research in Late-Antique Urbanism*, ed. L. Lavan (*Journal of Roman Archaeology, Suppl.* 42) (Portsmouth, RI, 2001), 137–154, particularly 152–153.

107 For more on the progressive disintegration of the fiscal system based on the *curiae*, see A. Laniado, *Recherches sur les notables municipaux dans l'empire protobyzantin*, Monographies du Centre d'histoire et de civilisation de Byzance 13 (Paris: Association des amis du Centre d'histoire et civilisation de Byzance, 2002), notably 103–130; and J.H.W.G. Liebeschuetz, *Decline and Fall of the Roman City* (Oxford: Oxford University Press, 2001), 104–136.

108 For more on the Byzantine village, see most recently the papers and the bibliography published in *Les villages dans l'Empire byzantin*, ed. J. Lefort, C. Morrisson and J.P. Sodini, Réalités byzantines 11 (Paris: Lethielleux, 2005), 31–54.

registering tax-payers according to their place of residence.[109] Finally, in the eleventh century, an evolution in the tax documentation reflected a new shift in the centre of gravity of the tax mechanism. Henceforth, the tax department would steadily and increasingly consult the *praktikon*, a tax document with the proprietor as its reference point. In this way geographically dispersed estates were listed in the same document.[110] However, the "balance of power" between the two types of documentation reflects above all the existing one between small and great properties, and there is no reason to believe that one system fully replaced the other. The land register for Thebes does indicate that the "geographical" document was still in use in the twelfth century and *praktikon* type documents probably existed before the tenth or eleventh century. Despite this, from the privileged reference point of the tax administration one may conveniently discern three great phases: the city, the village, the great landowner.

These are well known developments, but the most important fact, from an economic and tax point of view, does not, to my mind, lie here. One aspect of the development that has not been studied is the existing link between the scale of the fiscal district, the operational mechanisms of levying in gold and the practicalities of monetary production. In his study of the land register for Aphrodito, Constantin Zuckerman concludes his description of Egypt's sixth-century developments in fiscal practices by emphasizing how the "tentacles" of the imperial administration seemed to penetrate everywhere.[111] Indeed, the state seemed then to seek out the closest possible contact with the tax-payer, a natural consequence of the dismantling of the *curiae*.

The seventh to eighth centuries nevertheless appear to have experienced a reverse development. Thus, in Sicily, probably the province about which most is known for this period, the state seems to have increasingly relied upon the great landowner. Around 600, the tenants of the pontifical domain were directly responsible for paying their taxes. Conversely, towards the end of the seventh century at the very latest, the tax department deals directly with the great Sicilian ecclesiastical landowners.[112] It is difficult to determine the extent

109 Oikonomidès, *Fiscalité et exemption fiscale*, 53–56. See for example, N. Svoronos, "Recherches sur le cadastre byzantin de Thèbes et la fiscalité aux XI^e^ et XII^e^ siècles: le cadastre de Thèbes," *Bulletin de correspondance hellénique* 83 (1959), 1–145.

110 Oikonomidès, *Fiscalité et exemption fiscale*, 61–66.

111 Zuckerman, *Du village à l'empire*, 142.

112 I broached this question in A. Nef and V. Prigent, "Contrôle et exploitation des campagnes en Sicile: le rôle du grand domaine et son évolution du VI^e^ siècle au XI^e^ siècle," in *Late Antiquity and early Islam: Continuity and Change in the Mediterranean and Arabia*. I. *Authority and control in the countryside*, ed. P. Sijpejstein (Leiden: Brill, forthcoming).

to which this development applied to the whole empire, but when our sources become abundant again, it seems that the cultivators depending upon a great landowner were paying their taxes through him.[113] Indeed, previously, everywhere in the empire, the great landowners constituted, under the name of *prosôpa*, a special category of tax-payers, with their estates becoming *ipso facto* autopract units, that is tax units responsible for the collection of their taxes on behalf of the state.[114] It seems a similar development occurred in villages at an empire-wide level. Indeed, it is at the village level that the famous system of tax solidarity came into play, whenever one of its members was unable to pay.[115] That this system, logically born in the context of distributive taxation, should have survived the introduction of the *ad valorem* tax would seem to indicate that, at a certain point in this development, for the tax department the real tax-payer was the village, and not each of its constituent land owners.[116] In establishing the origin of this development, an undoubtedly important point is the highlighting of a similar development identified in the very early years of Islamic Egypt, and thus likely to reflect the practice of the last days of the Byzantine era. Indeed, from the very first years of the Muslim domination in Egypt, the *chôrion* also appeared as a fiscal district,[117] and one may legitimately question the real degree of departure from the imperial system implied in this "instantaneous" development.[118] A similar development may certainly explain the importance of the rural commune in Byzantium, and the extremely early

113 For more on this question, Oikonomidès, *Fiscalité et exemption fiscale*, 42.

114 Oikonomidès, *Fiscalité et exemption fiscale*, 54, 60.

115 Kaplan, *Les hommes et la terre*, 205–216.

116 Also following on along these lines, N. Oikonomidès, "The Social Structure of the Byzantine Countryside," *Symmeikta* 10 (1996), reprinted in *Social and Economic Life in Byzantium*, Variorum Collected Studies 799 (Aldershot: Ashgate/Variorum, 2004) XVI, 107.

117 As a fiscal unit, the *chôrion* is attested in Egypt as from 643. However, it may not designate an entire village but rather one of its sub-divisions. I wonder if this point should be linked to the necessity of finding someone whose patrimony could effectively guarantee the total amount of taxes. To do so, in the biggest and richest villages, it could have been necessary to divide the fiscal district into smaller parts. This phenomenon was studied by Ruey-Lin Chang and Jean Gascou, who accordingly reinterpreted *SB* XX 14443 in their paper given at the 2006 conference of the International Society of Arabic Papyrology. Most recently, the latter presented a clarification of this question during the *Egypt in the Seventh Century Colloquium*, 11–12 July 2012 (Churchill College, Cambridge).

118 We are broaching here the delicate question of the conquerors' administrative capacity to innovate at such an early date; P.M. Sijpesteijn, "The Arab Conquest of Egypt and the Beginning of Muslim Rule," in *Egypt in the Byzantine World, 450–700*, ed. R.S. Bagnall (Cambridge: Cambridge University Press, 2007), 437–457, and "New Rule over Old Structures: Egypt after the Muslim Conquest," in *Regime Change in the Ancient Near East*

date of the first evidence brings me to accept that the innovation may have arisen under Heraclius, precisely in a context of disorganised traditional administrative frameworks.[119]

Whatever the value that we are willing to attribute to the Egyptian case, this increasing importance of the village went hand in hand with that of the great landowners towards reducing the number of "tax-payers" during the critical phase, about which we are so ill-informed. Yet this point seems to me essential to a good understanding of how the connection between a tax in gold and low bronze issues was maintained, phenomena presented earlier in this paper. Indeed, bronze coins played a crucial role in the levying of tax in gold as it allowed the state to round up the amounts owed by tax payers, drawing in more gold by "giving change" in bronze.[120] Thus insufficient bronze issues were bound to cause real problems in the end. Yet this obstacle could be avoided by reducing the number of these transactions and the most efficient way of doing this was to increase grouped payments through *chôria* and *prôsopa.* In this way, the "upwards" shift of the tax system's centre of gravity, from the individual tax-payer, tenant or small landowner, towards the great landowner and the village, might have played a key role in resolving the paradox represented by the maintaining of a taxation in gold in the absence of sizeable bronze issues. Furthermore, it seems to me quite significant that, conversely, the availability of bronze coins would have increased in the sixth century when, as the cities bowed out, the administration's "tentacles" reached out as far as possible to the individual tax payers.[121] The resumption of high bronze coin production under the Amorians also corresponded to the period in which the classical Mesobyzantine system was being established, with its public tax collectors coming once again in direct contact with the tax-payer.[122] Of course we cannot

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and Egypt. From Sargon of Agade to Saddam Hussein, ed. H. Crawford, Proceedings of the British Academy 136 (Oxford: Oxford University Press, 2007), 183–200.

119 Papyri also offer glimpses of new procedures of requisition established by this emperor; J. Gascou, "De Byzance à l'Islam. Les impôts en Égypte après la conquête arabe," *Journal of the Economic and Social History of the Orient* 26 (1983), 101.

120 This was the *antistrophè* system; Morrisson, "Byzantine Money," 952.

121 See the tables compiled in H.C. Noeske, *Münzfunde aus Ägypten. 1, Die Münzfunde des ägyptischen Pilgerzentrums Abu Mina und die Vergleichsfunde aus den Diocesen Aegyptus und Oriens von 4.8. Jh. n. Chr.: Prolegomena zu einer Geschichte des spätrömischen Münzumlaufs in Ägypten und Syrien*, Studien zu Fundmunzen der Antike 12 (Berlin, 2000) with the remarks of C. Morrisson, "La monétarisation en Égypte et en Syrie-Palestine du IVe à la fin du VIIe siècle: le témoignage de l'archéologie," *Antiquité Tardive* 12 (2004), 407.

122 This is the system described in Philotheos' *Klètorologion/Cletorologion*, edited in Oikonomidès, *Les listes de préséance*.

leave the realm of theory, but the chronology of the different phenomena that collide here is truly compatible with the suggested outline of the broad developments. A last point would support this: the fractional gold coinage (*tremisses* and *semisses*) played an important role in the system by enabling easy payments in gold much lower than twenty-four carats. However, these coins stopped being produced in useful quantities in the course of the eighth century, a sign that they were no longer useful enough to justify their production. Once again, the theory of increased grouped payments, which sought to reduce small payments as much as possible, would provide us with an explanatory framework for the disappearance of these particular types of coins.[123]

4 The Tax Collection Staff

It is important to examine the existing relationship between the state, the tax collector and the beneficiary of the fiscal levy. The Mesobyzantine ideal was a civil servant tax collector who would gain nothing directly from exercising his functions, which is to say a total distancing between the collection of tax and the distribution of the tax product. This model seems to have been reached in the course of the eighth century, and to have been maintained until the eleventh.[124] The tax collector was then remunerated by the state, the *sportula* paid by the tax-payer to the visiting tax collector coming in addition to the salary, without being part of the tax itself.[125] The emperors repeatedly sought to tighten this system either by forbidding civil servants to multiply their visits or by integrating the *sportula* into the tax on the one hand in order to increase the tax agents' direct remuneration on the other (end of eleventh century).[126]

123 Of course we must also take into account that the *miliaresion* could also intervene to do so, although initially this new coin held more of a ceremonial than a practical role and although gold was the expected medium of payment.

124 For the previous period, the system was more complex as imperial civil servants worked along representatives of the *curiae*. A precise description of the role played by the various parties can be found in Zuckerman, *Du village à l'empire*, 117–142.

125 This was not a minor point, for the tax payment stood as a right of ownership (we will come back later to this point). If an individual person paid 5 *solidi* in tax and 1 in surtax, he would have rights over a real estate value of 120 *solidi*, and not 144. See N. Oikonomidès, "Terres du fisc et revenu de la terre aux x^{e}–xi^{e} siècles," in *Hommes et richesses dans l'empire byzantin*, ii, *viii^{e}–xv^{e}*, ed. V. Kravari, J. Lefort and C. Morrisson, Réalités byzantines 3 (Paris: P. Lethielleux, 1991), 321–337, re-published in *Social and Economic Life in Byzantium*, xi.

126 Oikonomidès, *Fiscalité et exemption fiscale*, 76–80.

Three additional types of tax collector nevertheless seem to come through in the sources. The first is the private individual, probably working through a contract, and about whom we unfortunately know hardly anything. However, the chroniclers Theophanes and Nicephorus provide us with a very clear case, by informing us that at the time of his election by the rebel troops of the *Opsikion*, Theodosius III was only a mere private individual in charge of tax collection (ἐκλήπτορα τῶν δημοσίων φόρων ὑπάρχοντα, ἀπράγμονά τε καὶ ἰδιώτην).[127] This curious description fits with what we know of the practice in sixth-century Egypt or Sicily: individuals seemed to enter into an agreement in order to levy taxes, pledging their own patrimony as security for their activity.[128] And indeed, the term ἐκλήπτωρ refers to an entrepreneur or an estate manager, notably translating the Latin *conductor.*[129] A recent re-reading of a letter of the *Variae,* relating to the organisation of the tax system underpinning the supplying of the army, highlighted a similar system in Gothic Italy, in relation to the disappearance of the *curia.*[130] This had nothing to do with tax farming since no sum was paid out prior to the tax levy.[131] The *kommerkiarioi*'s famous seals, even if I do not believe they belonged directly to tax collection agents, undoubtedly reflect the same logic, the subcontracting of activities linked to the management of tax resources to certain rich individuals.[132] That these seals disappeared under Leo III, who was the opponent of an emperor belonging to this category of "entrepreneurs," and who sought to promote a

127 Théophane le Confesseur, *Chronographie*, ed. C. De Boor, I–II (Leipzig: Teubner, 1883–1885), I, 385, l. 21–22. Likewise *Nikephoros, Patriarch of Constantinople: Short History*, ed. C. Mango, Corpus Fontium Historiae Byzantinae 13 (Washington, D.C.: Dumbarton Oaks, 1990), 50, l. 20–21: τῶν δημοσίων φόρων πράκτορα, ἀπράγμονα τινα καὶ ἰδιώτην τυγχάνοντα. See the remarks of Laniado, *Recherches sur les notables municipaux*, 114.

128 For the Egyptian parallels (according to *P.Oxy.* LXII, 4350 [22 July 576]) and the Sicilian ones, see Nef and Prigent, "Contrôle et exploitation des campagnes."

129 For the precise term, which appears in the legislation under Justinian I to designate tax collectors who were not members of the *curia*, see Laniado, *Recherches sur les notables municipaux*, 113–114.

130 Vera, "Dalla liturgia al contratto," 59–64.

131 The term d'ἐκλήπτωρ may also designate farmers, but not in the context of our current study. For the late Roman *conductores*, see D. Vera, "'Conductores domus nostrae, conductores privatorum'. Concentrazione fondiaria e distrubuzione della richezza nell'Africa tardoantica," in *Institutions, société et vie politique dans l'Empire romain au IV^e^ siècle ap. J.C.*, ed. M. Christol et al. (Rome: École Française, 1992), 465–490.

132 Let us recall that from the sixth century the management of the *coemptio* could fall to private individuals, notably merchants (Vera, "Dalla liturgia al contratto," 65). However, in Byzantium the *kommerkiarioi* operated on a completely different scale, as they were situated at the summit of the palatine hierarchy. Their own agents nevertheless belonged to less prestigious categories.

body of well-remunerated civil servants, seems significant.[133] Subsequently, in the eleventh century, it seems that the empire had sometimes recourse to tax farming,[134] but we lack the sources to study this process, and the practice would probably only have affected the management of imperial estates whose leasers simultaneously paid tax and rent.[135]

Whatever the case, the civil servant and the entrepreneur described here did not benefit directly from the tax they managed.[136] One of the major developments of the eleventh century was the break from this traditional ideal of distancing people responsible for the tax levy from its beneficiaries. It is furthermore possible that this development arose little by little out of another very clear trend in the organisation of imperial finances: the desire to pair closely one source of income with one source of spending.[137] Whatever may be the case for this last point, we note that in the course of the eleventh century civil servants received the task of managing a specified source of imperial treasury revenue, along with the right to keep the surplus.[138] In the end this practice extends to the land-tax and some tax-payers and their patrimony were entrusted to the care of a specific civil servant, who levied tax from them for his own benefit. This was the principle of the *pronoia*, which has often been linked with the western concept of fiefdom.[139] However, initially the system

133 This was the theory held by Oikonomidès, "Silk Trade and Production," 33–53, reprinted and clarified in part in "The Role of the State in the Byzantine Economy," in *Economic History of Byzantium from the Seventh through the Fifteenth Century*, 987–998.

134 For a possible case, see F. Trinchera, *Syllabus graecarum membranarum* (Naples: Cattaneo, 1865), n. 16.

135 *A priori*, Theophylact of Ohrid's famous complaint denouncing the activity of tax collectors who fostered the interests of the tax department because they were their own could be interpreted in the frame of tax-farming activities. However, as we mentioned above, at the time the old *sportula* were integrated into the tax, the tax collector henceforth receiving a fixed percentage of the tax levied, which accounts for the archbishop's denunciation without needing to invoke tax-farming.

136 Tax-farming is of course far more ambiguous.

137 This logic underpins the constitution of the great financial *sekreta* and *oikoi*, such as the *oikos tôn Manganôn* or the *Orphanotropheion*.

138 This could be a pious foundation such as a *sekreton*, which is to say a central administration department, a notable example being the *sekreton tôn Manganôn*, in P. Lemerle, *Cinq études sur le XI^e siècle byzantin*, Le monde byzantin (Paris: Editions du Centre National de la Recherche Scientifique, 1977), 280–283; and P. Magdalino, "The Byzantine Army and the Land: From Stratiotikon Ktema to Military Pronoia," in *Byzantium at War (9th–12th c.)*, ed. K. Tsiknakis (Athens: Goulandri Horn, 1997), 34.

139 Still essential is A. Kazhdan, "Pronoia: The History of a Scholarly Discussion," *Mediterranean Historical Review* 10-1 (1995), 133–163; also Magdalino, "The Byzantine Army and the Land," 15–36. After this paper was finished was published M.C. Bartusis,

probably did not primarily affect soldiers,[140] even if, in the twelfth century, this practice does seem to have extended considerably: Emperor Manuel is credited with systematically using it to finance the army. Moreover, it did not initially grant any other rights aside from that of levying tax, as, for example, the *pronoiarios* did not hold the right to render justice over any tax-payers owing him their tax. To conclude, let us recall that this system of tax collection even reached beyond the financing of the administration: just as with the salaries, the *ex gratia* annuities could be the object of such an arrangement, the beneficiary of the imperial largesse receiving the right to undertake personally collection from the tax-payers of the sums he (or it, as many beneficiaries were monasteries) had been granted.[141]

5 The Tax Product Circuit

The last question we will broach, before analysing the collected data, is the tax product circuit, that is the successive steps whereby the goods or coins levied from the tax payer passed to the beneficiaries, their physical itinerary from collection to "consumption." A few sentences will suffice at this point. The question essentially comes down to ascertaining the extent to which the areas where the tax product was levied corresponded to that in which the state spent its resources. Once again, for the classical period, the ninth to tenth centuries, the matter is quite simple. Tax paid in gold was sent to the capital, from which the amounts required for the good functioning of the provincial administration were sent out. Thus we know that military pay, the biggest expense of all,

Land and Privilege in Byzantium: the Institution of Pronoia (Cambridge: Cambridge University Press, 2013). The novelty lay in the fact that the basic land tax was affected, for the system of the *exkoussatoi* that predicted the devolution of these individuals' personal taxes to a beneficiary designated by the state goes back much further, at least to the eighth century. The clearest cases stem from Italy where the documentation is much more abundant, P.S. Leicht, "Gli excusati nelle provincie italiane soggette all'impero d'Oriente," *Papers of the British School at Rome* 24 (1956), 22–28.

140 But see nevertheless the important analysis of the conditions of the settlement of certain foreign contingents in the eleventh century and its links with the development of the *pronioia* in Magdalino, "The Byzantine Army and the Land," 26–32.

141 See for example the *logisimon* granted to the Pantokratôr monastery, P. Gautier, "Le Typikon du Christ Sauveur Pantocratôr," *Revue des études byzantines* 32 (1974), l. 1548–1550. Generally speaking, lands receiving full fiscal immunity fell within the same logic since the landowner benefitted directly from the portion of rent that would normally go towards paying tax.

was sent out from Constantinople according to a quadrennial rota,[142] rather than being paid from the regional treasury with only the surplus being then dispatched to the Great Palace.[143] The same applied, to a large extent, to high-ranking civil servants' pay. The *strategoi* were paid their salary from Constantinople.[144] Only those in command of peripheral provinces would eventually receive part of their salary locally, notably from the indirect tax product, the *kommerkion.*[145] Thus here the ideal, or at least the preferred choice, was clearly the "long" circuit.

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142 Constantine Porphyrogenitus, *De Cerimoniis Aulae Byzantinae*, ed. J. Reiske (Bonn: CSHB, 1829), 493–494.

143 Hendy, *Studies in the Byzantine Monetary Economy*, 191–192. See the clear cases supplied by the thefts of the military pay sent to the provinces, mentioned by Theophanes the Confessor, *Chronographie*, 484–495 (the theft by the Bulgars of 1100 pounds of gold from the military pay of the Strymon theme) and 489 (the theft by the Muslims of the 1300 gold pounds from the military pay of the Armeniacs' theme). Additional sums were paid in the event of campaigns, see the brilliant study of J. Haldon, "Theory and Practice in Xth Century Military Administration: Chapters 2, 44 and 45 of the Book of Ceremonies," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 13 (2000), 201–352.

144 Liutprand of Cremona's famous description of his civil servants leaving the throne room bowed down by the weight of gold bags does not expressly mention the *strategoi*, but these are certainly the officers who must be identified with the numerous magistrates and patricians he mentions, civil officers and dignitaries of this rank being rare; *Liudprandi Cremonensis Antapodosis, Homelia paschalis, Historia Ottonis, Relatio de legatione Constantinopolitana*, ed. P. Chiesa, Corpus christianorum. Continuatio mediaevalis 156 (Turnhout: Brepols, 1998), *Antapodosis*, VI. 10. That Constantine VII emphasised the exception represented by the Western *strategoi* who received no *roga* but retained part of local tax revenues (see the following note) does indicate that *a contrario* the Eastern *strategoi* (the most numerous and most important) were paid in (or from) Constantinople.

145 The *rogai* of the *strategoi* around 900 are stipulated in the *De Ceremoniis,* which also notes the Western *strategoi*'s particular right to be paid directly out of local taxes (Constantin Porphyrogénète, *De Caerimoniis*, 696). I would be less inclined than Hendy, *Studies in the Byzantine Monetary Economy*, 191, 651, to state that the Western *themes*' troops would have been paid directly from local resources, the case of the Strymon *theme* clearly running counter to this notion. The case may, however, be applied to the very remote Italian *themes*, which until the end of the ninth century had the coinage from the Syracuse mint at their disposal. For metrological reasons, we are in any case sure of this after Leo III's monetary reform, in the early 730s; for more on this point, see V. Prigent, "Un confesseur de mauvaise foi. Notes sur les exactions financières de l'empereur Léon III en Italie du Sud," to be published in *L'economia dell'Italia bizantina*, ed. S. Cosentino, in *Cahiers de Recherches Médiévales et Humanistes*. See also the specific case of the *strategos* of Mesopotamia, who was paid from the *kommerkion*: the earliest holder of this office made use of a seal inspired directly from that of the *kommerkiarioi*; W. Brandes, "Überlegungen

For the end of our period, the question becomes more complex due to the development of the *pronoia* and its forerunners. *A priori*, a "short" system was at work here, since the one responsible for levying benefited from the tax product. However, in practice, we must take into account two possible scenarios, distinguished by the scale of the granted concession. The minor concessions alone truly changed the former arrangement: soldiers who received one or two families could effectively live in their vicinity. But the great aristocrats who benefited from large-scale concessions usually resided in Constantinople.[146] In this case, initially predominant, long-distance transfers of the tax product, continued to take place. Thus it is in the twelfth century, with the systematisation of the military *pronoia* instigated by Manuel I, that we should situate the true break.[147]

For the beginning of the period, the answer depends in part upon the chosen interpretation of the function of the *kommerkiarioi*. If we do not ascribe them any fiscal role (as in N. Oikonomides' theory), we should then probably extend the model of the ninth to tenth centuries to the Dark Ages, that is the system of rotating military salaries harking back at least to the beginning of the eighth century.[148] If we hold to the notion that identifies them with civil servants who managed a tax in kind for the upkeep of the local army, we must accept a "short" circuit, the eventual surpluses alone being sent to Constantinople. Conversely, if one considers, as I do, that they managed purchase transactions in the provinces thanks to funds that the emperor put forward for this, we are presented with two alternatives: either they acted through the means of sums levied on location, in which case we are dealing with a "short" circuit, or else they received their funds from Constantinople

zur Vorgeschichte des Thema Mesopotamien. Das Siegel eines στρατηγὸς Μεσοποταμίας aus dem Anfang des 9. Jahrunderts (Zacos-Veglery, Nr. 284)," *Byzantinoslavica* 44 (1983), 171–177.

146 From the turn of the year 1000, we note a trend towards a closer gathering of the Byzantine elite in the capital; H. Ahrweiler, "Recherches sur la société byzantine au XI^e^ siècle: nouvelles hiérarchies et nouvelles solidarités," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 6 (1976), 99–124.

147 Niketas Choniates' complaint is often quoted in connection with this: *Nicetae Choniatae Historia*, ed. E. Bekker (Corpus scriptorum historiae byzantinae. Bonn, 1835), accusing Manuel I Komnenos of extending considerably the system: "those who were thus admitted in the ranks of the army (the *pronoiarios*) received an imperial certificate which granted them irrigated lands, fertile fields and, as tributaries, Romans by way of slaves." See P. Magdalino, *The Empire of Manuel I Komnenos, 1143–1180* (Cambridge: Cambridge University Press, 1993), 232–233.

148 For more on this point, see Hendy, *Studies in the Byzantine Monetary Economy*, 649.

and operated at the end of a "long" circuit. It is impossible to settle this with any certainty. However, the *kommerkiarioi* were based in Constantinople,[149] and if they did intervene in the context of a "short" circuit the choice of monetised *coemptiones* hardly seems logical. It is the same if the quadrennial system of payment originated at a very early date, a short circuit being irrelevant in such a financial framework. Finally, the short circuit is problematic when we consider the importance of the annual gold coin production maintained in this period, because we should henceforth identify the new coinage with the recycling of those surpluses arising from the provinces, that is the smallest part of the taxes, resulting in a picture of suspiciously abundant financial resources. If we consider an extreme case, a very geographically remote province, we nevertheless note the establishment of mechanisms aimed at facilitating the circulation of monetary reserves. Thus, the monetary reform decided by Justinian II in Sicily implies an important circulation of monetary metals between the capital and this outlying province: indeed, striking the Sicilian *solidus* to the standard of twenty-two carats enabled the government to calibrate its value (both nominal and metallic) on Italy's devalued coinage, all the while keeping the option open to use a similar alloy for the Sicilian and Constantinopolitan gold coinage.[150] In the light of these points, I would personally tend towards the existence of a long circuit during this period.

6 Interest and Limit of Tax Paid in Gold in a Long Circuit

Let us draw up an initial assessment of this overview before offering some more general reflections. Until the eleventh century, the Byzantine Empire seems to have made relatively stable choices: a monetised tax based upon the value of the instrument of production; the greatest possible distancing between the one responsible for and the one benefitting from the levy; a long circuit of tax product. Merely stating these ideal parameters highlights how the underpinning logic of these choices was not economic, as it implies considerable additional costs along with important transfer and administration expenses. Nor was the option of a tax paid in gold based upon the value of the land the most "economic." It caused the sum total of tax to be independent of the evolution of agricultural prices, or at least so long as this evolution did not

149 Which is notably suggested by the fact that they could combine responsibilities in far distant provinces during the course of a single indiction.

150 Prigent, "Monnaie et circulation monétaire en Sicile," 394. This system was, however, relinquished with Leo III's reform (see note 145).

upset the price of the land to the point of causing an adjustment of its fiscal evaluation. It is thus clear that during a phase of rising prices, a state demanding payments in gold would be the greatest loser, whereas the tax-payer would see his real tax burden reduced. Tax imposed upon the value of the production would therefore be more profitable in a context of rising agricultural prices, which does seem to have been the case from the eighth century to the ninth,[151] in any case most certainly during the decades following the loss of Egypt. Yet this was clearly not the choice that was made.[152]

The rationale for the administration's choices was thus a political and strategic one. Choosing a tax paid in gold enabled the greatest distancing between areas of levies and of investment of riches, and this opened up a great many strategic opportunities. As a matter of fact, the growing importance of gold taxes during the sixth century went hand-in-hand with Justinian I's aggressive policy,[153] just as the great military campaigns of reconquest in the second half of the tenth century took place against the background of reforms ensuring a new increase in gold levies.[154] But, beyond this, such a solution presented a tool of efficient political control of the territory as the tax product could be easily centralised in the capital and later be sent out to the provinces; with a tax in kind this would not be conceivable without incurring prohibitive costs.[155] Admittedly, upon several occasions the empire's enemies took hold of the coffers of gold sent to pay the troops in the provinces. This was regrettable, but the risk was still less than that posed by truly fiscally autonomous

151 See the collected data with commentary in J.C. Cheynet and C. Morrisson, "Prices and Wages in the Byzantine World," in *Economic History of Byzantium*, 798–862.

152 Similarly, the tax paid in gold indexed on the value of the real estate patrimony was directly affected by the phenomena of devaluation that alleviated the real burden of the tax payers, until the state reacted by reformulating their demands in the new coins, a scenario that can be observed in the case of Sicily; Prigent, "Un confesseur de mauvaise foi."

153 See the observations to this effect of Zuckerman, *Du village à l'empire*, 170–176, and his analysis of the reform of the duke's functions in "La haute hiérarchie militaire en Afrique byzantine," *Antiquité tardive* 10 (2002), 169–175.

154 See further below.

155 Regarding the problems and additional costs linked to the transfer of bulky goods, see for example C. Adams, *Land and Transport in Roman Egypt: A Study of Economics and Administration in a Roman Province* (Oxford: Oxford University Press, 2007), e.g. 159–197. In the context of the annonary taxation of the Late Roman Empire, an important part of the tax product was consumed more or less on the spot by the troops; a comprehensive study of the system can be found in F. Mitthof, *Annona militaris. Die Heeresversorgung im spätantiken Ägypten. Ein Beitrag zur Verwaltungs- und Heeresgeschichte des Römischen Reiches im 3. bis 6. Jh. n. Chr.*, 2 vols, Papyrologica florentina 32 (Florence, 2001).

provinces.[156] If the governor was sometimes allowed to pay himself either fully or in part out of the local tax, the majority of the tax product was nevertheless beyond his grasp, which considerably limited his courses of action. Thus, one of the greatest assets of taxation in kind was its capacity to act as an instrument of political control, a point often neglected. This possibility for a maximal centralisation of tax resources, and thus of financial reserves, is the key to the strength of the centralised state, best illustrated by the ability of emperors such as Michael II and Basil II to gain victory over rebels who for several years controlled the majority of the territory whilst the emperors fell back into Constantinople.[157] Of course there were forms of tax levy that were directly spent on location, particularly in the context of military logistics. It is nevertheless notable that even in this instance, responsibility for the management of the process (of levies and expenditure) eluded the local governor and instead fell to a representative of the central financial service, the *prôtonotarios*.[158] The search for the greatest possible distancing between the one responsible for the levy and the beneficiary of it follows the same, eminently political, logic.

This question also comes into play when explaining the near miraculous stabilization of the empire in the eighth century. As we previously mentioned, when addressing the issue of the circulation of bronze coins during the dark centuries, the metallic stocks show a considerable inertia in relation to the fluctuations in population and the economy. Even if this may seem somewhat provocative, I would therefore not be surprised if the quantity of gold and bronze *per capita* in the empire in the eighth century was higher than in the

156 The caliphate, which did not follow this path, experienced a premature fragmentation, even if the matter of dynastic legitimacy clearly also played a key role in this process.

157 For Michael II, see P. Lemerle, "Thomas le Slave," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 1 (1965), 255–297; for Basil II, see C. Holmes, *Basil II and the Governance of Empire (976–1025)* (Oxford: Oxford University Press, 2005), 240–298.

158 See the data on military logistics compiled and analysed in Haldon, "Theory and Practice," 285–294. I would note that, contrary to what is said in Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 679–682, the protonotary does not appear around 800 in relation to Nicephorus I's reforms, a reform which would have truly been responsible for "founding" the *themes*. The protonotary is attested to in Sicily from the start of the eighth century by two lead seals (Regional Archaeological Museum Paolo Orsi, Syracuse inventory no. 6908 and Regional Archaeological Museum Antonio Salinas, inventory no. 40404), precisely because since the seventh century this province fell under the authority of the *cubiculum* from which stemmed the *sakellarios*, the protonotary's superior during the later period, V. Prigent, "La Sicile byzantine, entre papes et empereurs (6è^{me}–8è^{me} siècle)," in *Zwischen Ideal und Wirklichkeit: Herrschaft auf Sizilien von der Antike bis zur Frühen Neuzeit*, ed. D. Engels, L. Geis and M. Kleu (Stuttgart, 2009), 211–213.

sixth century, due to the tendency to concentrate reserves in the capital and the possibility of easy repatriation of capital during the loss of the eastern provinces. That the production of Byzantine gold coins under Constans II and Constantine IV seems higher than it had been under certain sixth-century emperors, when the Heraclides reigned over only a fraction of the previous territory and certainly not the richest or the most populated one, would suggest this.[159] One might also point to the fact that the quality of Carthage's gold coinage remained high until the eve of the Muslim conquest. On the other hand, the first African Muslim issues show a far worse alloy.[160] This contrast cannot but bring to mind the repatriation of precious metal reserves available to the African imperial mint. This aspect of the problem would have offered a strong basis for the re-establishment that we note under the Isaurians. Furthermore, in a context of relative abundance of gold, one might better understand how the value of the bronze coins would have increasingly become fiduciary.

Another political asset of the taxation in gold stems from the fact that, from the tax-payer's perspective, it also presented a certain number of advantages, and may therefore have contributed towards strengthening the population's loyalty to the central power. It notably offered a safeguard against the abuses of tax officers, particularly in troubled political times when the tax collection process became increasingly difficult to control. Indeed, demanding a tax paid in gold protected the tax-payer against the manipulation of the weights and measures used for payments.[161] Furthermore, the extremely high value of the

159 See above, n. 63. The tributes demanded of the Arabs made no difference: the payments only related to a few years, and in the long term were counterbalanced by payments in the reverse direction.

160 See the data compiled in J.N. Barrandon, C. Morrisson, and J. Poirier, "Nouvelles recherches sur l'histoire monétaire byzantine: évolution comparée de la monnaie d'or à Constantinople et dans les provinces d'Afrique et de Sicile," *Jahrbuch der Österreichischen Byzantinistik* 33 (1983), 267–286; and A. Gondonneau and M.F. Guerra, "The Gold from Ghana and the Muslim Expansion. A Scientific Enquiry into the Middle Ages using ICP-MS Combined with an UV Laser," in *Metals in Antiquity*, ed. P. Budd et al. (1999) (BAR International Series, 792), 262–270; and A. Gondonneau and M.F. Guerra, "The Circulation of Precious Metals in the Arab Empire: the Case of the Near and Middle East," *Archaeometry* 44 (2002), 573–600. We will soon have at our disposal a new summary on this Arabo-latin coinage by T. Johnston, "New Perspectives on the Earliest Gold Coinage of Umayyad North Africa," to be published in the *Revue numismatique*.

161 To be convinced of this one need only peruse the correspondence of Gregory the Great, whose officials discovered in the pontifical domains the use of measurements with a capacity equal to 156% of the normal measurement; *Registrum Epistularum*, XIII, 35, l. 10. In the framework of a tax paid in gold, fraud must have primarily occurred at the stage of the evaluation of the fiscal value of the taxable areas, notably through the use of a

gold coins, and the consequent strict control of metrology, led to the counting of coins, which also eliminated the risks inherent in weighing, as was necessary for other types of coins. In a similar vein, as we have mentioned, because the Byzantine tax paid in gold was based upon the value of the land, it allowed the tax-payer to benefit from any eventual increase in agricultural prices. However, for all that, the state did not suffer any loss. Thanks to the system of *coemptio* (or its subsequent equivalents), it could, whenever it should so wish, fix the agricultural prices as it willed, and thus restore the purchasing power of its levy in gold where it would be spent. This "injustice" only periodically struck the tax-payers of more or less large areas, eventually leaving them to benefit from the situation in the rest of the territory. Thus, in a way, the interplay between the taxing of the instrument of production and the process of forced sales establishes a system in which everyone won so long as there remained easy access to the currency. Indeed, as soon as the quantity of gold in circulation was no longer sufficient, as happened under Constantine V, tax paid in gold triggered deflation.[162]

The choice for taxes paid in gold therefore stemmed from the strategic, and especially the political advantages it presented. The real challenge for the state was henceforth to overcome its intrinsic limit: the supply of precious metals. Investigations into the means employed to this end reveal the true foundations of the stability of the empire's finances.

An essential point to emphasise is that, throughout the high Middle Ages, the system functioned for the most part in a closed circuit. For a long time international trade was limited in scope and at all events essentially worked for the benefit of the empire.[163] Furthermore, the export of precious metals was

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shortened *schoinion*. Thus Michael Choniates denounced the fact that the tax officials measured the land with "flea-sized steps" (quoted with commentary in Oikonomidès, *Fiscalité et exemption fiscale*, 52). However, the dissociation between the person responsible for estimating and levying the tax was an efficient safeguard.

162 The patriarch Nicephorus gives a detailed description, when Constantine V's increased demands forced the peasants to sell off their crops in order to gain access to the cash so essential for paying taxes; *Nikephoros, patriarch of Constantinople: Short History*, ed. Mango, 160.

163 This was certainly the case in the West, but not so obviously so in the Muslim East. An exhaustive description of the terms of East–West exchanges in the Middle Ages can be found in M. McCormick, *Origins of the European Economy. Communications and Commerce, A.D. 300–900* (Cambridge: Cambridge University Press, 2001). For the impact of these exchanges and the regional differences in the value of metals on metallic stocks, see P. Grierson, "The Monetary Reform of Abd al-Malik: Their Metrological Basis and Their Financial Repercussions," *Journal of the Economic and Social History of the Orient* 3 (1960),

forbidden by law and certain aspects of monetary policy also contributed to achieve this goal. By recognising for the silver coin a fiduciary value much higher than its metallic value, the Isaurian emperors would most certainly have helped prevent imperial silver stocks finding its way into the Muslim world.[164] The main driving force of the monetary circulation remained the cycle of tax levies and public spending (either directly or through purchases made by civil servants, who were themselves paid by the state).[165] Indeed, it has been estimated that across the empire's territory, 42% to 57% of the coins circulated through the fiscal cycle.[166] And yet, by the very fact of stimulating circulation, the tax process stimulated monetary availability. In this way the system operated like a virtuous cycle, even if it clearly had its limits, which, as we will come to see, were reached in the eleventh century.[167] In such a system, one of the main causes of diminishing metallic stocks is hoarding. It is therefore not surprising to see the empire endow itself with laws stigmatising this practice, and seeking to promote the return into circulation of coins thus immobilised.[168]

Another key point stems from the fact that the state held a quasi-monopoly over conferring signs of belonging to the elite. It thereby ensured a rapid return to its coffers of a substantial portion of the sums spent gaining the allegiance of this very same elite. Integration of the imperial aristocracy was expressed in particular by the bearing of purchasable titles, with which a pension was associated.[169] The return on this investment was much superior to that permitted by the laws on interest-bearing loans or by rental income from real estate.[170]

241–264, reprinted in P. Grierson, *Dark Age Numismatics*, Variorum Reprints (London: Variorum, 1979), XV.

164 The *miliaresion* probably had a nominal value double that of its intrinsic one; Hendy, *Studies in the Byzantine Monetary Economy*, 505.

165 Description in Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 482–488.

166 Morrisson, "Byzantine Money," 950.

167 See the analysis of the causes of the eleventh century "expansion devaluation" in Morrisson, "La dévaluation." I find it difficult to accept the alternative explanation defended by C. Kaplanis, "The Debasement of the 'Dollar of the Middle Ages'," *Journal of Economic History* 63 (2003), 768–801.

168 C. Morrisson, "La découverte des trésors à l'époque byzantine: théorie et pratique de *l'heurésis thèsaurou*," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 8 (1981) (= *Hommage à M. Paul Lemerle*), 321–343.

169 Even if the system was complex and underwent changes, the return broadly corresponded to 9.72%–8.33% on the initial investment; P. Lemerle, "'Roga' et rente d'État aux X^e^–XI^e^ siècles," *Revue des études byzantines* 25 (1967), 77–100.

170 Private individuals with senatorial rank lent at rates fluctuating between 4.2% and 5.5% and varying over time; see along with the previous bibliography, D. Gofas, "The Byzantine

In the end, the dignities became pure investments, and we even find such "titles" as components of dowries.[171] This system's importance to the elites is equally visible in the race for the higher titles which took place during the eleventh-century monetary crisis: in order to maintain the purchasing power of pensions paid out in devalued coins, the aristocrats were constantly seeking higher ranking titles from the emperors.[172] As a consequence of this vast market, the state was getting back to its coffers a great part of the funds disbursed to pay the salaries of officials. The system was all the more reliable in that in the event of a crisis the state could suspend payments.[173] At the same time, the state's workshops also held a monopoly over the production of certain luxury products, in particular that of textiles, which were indispensable to any dignitary anxious to "maintain his rank."[174] In fact, its products were for that matter likely to be directly substituted for the monetary payments owed to the civil servants.[175] To put it crudely, as a public official a member of the Byzantine elite received riches from the state and as an aristocrat he gave them back to the same state.

Yet, beyond these different points, the preferred tool for bringing the available stock of precious metals into line with what was required for the good operation of the fiscal mechanism remained the system of tax exemption in

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Law of Interest," in *Economic History of Byzantium,* 1096–1104, with bibliography. For the real estate income, we must distinguish between agricultural land, which gave a return of around 3.3% (Oikonomidès, "Terres du fisc et revenu de la terre," 331) and the rents of urban property, with an average return of 5.15%: N. Oikonomidès, "Quelques boutiques de Constantinople au X^e^ siècle: prix, loyers, imposition (Cod. Patmiacus 171)," *Dumbarton Oaks Papers* 26 (1972), 351, reprinted in *Byzantium from the Ninth Century to the Fourth Crusade: Studies, Texts, Monuments*, Variorum Reprints (Aldershot: Ashgate/Variorum, 1992) VIII.

171 Such was the case of Psellos, who included a dignity of *protospatharios* in the dowry constituted for his daughter; Lemerle, "'Roga' et rente d'État," 85–88; also with a translation of the text analysed by P. Lemerle, *Mothers and Sons, Fathers and Daughters: the Byzantine Family of Michael Psellos*, ed. and trans. A. Kaldellis (Notre Dame, IN: University of Notre Dame Press, 2006), 139–156.

172 J.C. Cheynet, "Dévaluation des dignités et dévaluation monétaire dans la seconde moitié du XI^e^ siècle," *Byzantion* 53 (1983), 453–477.

173 Theodore Balsamon attributed such a decision to Constantine X; A. Potlis and G.A. Rallis, *Σύνταγμα των θείων και ίερών κανόνων* (Athens, 1852–1859), IV, 523.

174 Oikonomidès, "The role of the Byzantine State in the Economy," in *Economic History of Byzantium*, 1011.

175 The *skaramangia* are cited among the payments, mentioned further above, made to the dignitaries in the passage by Liutprand of Cremona; Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 479–480.

exchange for service. Indeed, it was by this means that the state was in the privileged position of mobilising the necessary human resources for its good operation while avoiding any expenses.[176] The model *par excellence* here is the soldier who found himself exempt from surtaxes in place of regular military pay, the latter only being paid out in the event of an actual campaign. This practice had a wider application, with the category of *exkoussatoi* including individuals carrying out the most varied of tasks, the military *strateia* only being the most widespread form of this practice.[177] We do not know when precisely this system of financing was established, as it was not necessarily dependent upon the creation of the "stratiotic land," which is only well documented in the tenth century, but which could well have emerged in the eighth.[178] Fiscal exemption in exchange for military service may well have been in operation from the reign of Constans II, since the official in charge of compiling the military roles of such exempted soldiers is attested from the 650s.[179] Consequently,

176 Overview in Oikonomidès, *Fiscalité et exemption fiscale*, 164–169.

177 From a certain point of view, procedures like the *logisimon* resulted from the same logic. Thanks to this accounting artifice, the state avoided large sums of gold coins being blocked in a sterile fiscal cycle with beneficiaries receiving back the gold coins that they had just sent to the imperial treasury, allowing the state to make better use of the available gold coin reserves.

178 The classic study remains J. Haldon, "Military Service, Military Lands, and the Status of Soldiers: Current Problems and Interpretations," *Dumbarton Oaks Papers* 47 (1993), 1–68, especially 29–41, reprinted in idem, *State, Army and Society in Byzantium. Approaches to Military, Social and Administrative History, 6th–12th Centuries*, Variorum Reprints (Norfolk: Variorum, 1995), which finds an important complement in S. Cosentino, "Rileggendo un atto pugliese del 1017. Osservazioni sulla «terra militare» a Bisanzio," *Jahrbuch der Österreichischen Byzantinistik* 60 (2010), 47–67; and M. Kaplan, *Les hommes et la terre*, 244–255. Brubaker and Haldon, *Byzantium in the Iconoclast Era*, 744–754, have recently suggested an interesting reconstruction of the origin of the *themata* by situating their emergence under the reign of Nicephorus I. In addition, for the previous period, see M. Whitby, "Recruitment in Roman Armies from Justinian to Heraclius (ca. 565–615)," in *The Byzantine and Islamic Near East*, 3: *States, Resources, Armies*, ed. A. Cameron, Studies in Late Antiquity and Early Islam, 1 (Princeton, N.J.: The Darwin Press, 1995), 111–113.

179 The earliest properly dated mention of the function is the seal of Στεφάνου ἀπο ὑπάτον, πατρικίου, στρατιωτικοῦ λογοθέτου καὶ γενικοῦ κωμμερκιαρίου ἀποθίκις Παφλαγονίας, which we are able to date from the years 659–668 thanks to the presence of an imperial portrait; *Catalogue of Byzantine seals at Dumbarton Oaks and in the Fogg Museum of Art*, IV: *The East*, ed. J. Nesbitt and N. Oikonomidès (Washington, D.C.: DORLC, 2001), 11.20. For the origin of this civil servant, see also Brandes, *Finanzverwaltung in Krisenzeiten*, 225–229. Evagrius' *Ecclesiastical History* also contains a reference to records enabling the levying of conscripts during the reign of Maurice; Whitby, "Recruitment in Roman Armies," 82.

to some extent, the state's primary area of spending was removed from the sphere of monetary economy. This system should nevertheless not be confused with the later *pronoia*, as the *stratiôtès* did not dispose of any right over the payments of other tax-payers.

The importance of the system of fiscal immunity in exchange for service for balancing the finances is clearly apparent from the end of the tenth century, when the reforms of Nicephorus II Phocas sought to discard it. By replacing actual service with a payment in cash, the great conqueror made it possible to triple the production of gold coins, as Füeg illustrated in his recent research (Fig. 3).[180] Furthermore, this monetisation of the military service "tax" also enabled this levy to be extended to the population as a whole, which is evidenced by the fact that in the eleventh century even monasteries became liable for "military service."[181] The new policy therefore created a new tension over the available metallic stocks, since the quantity of cash required for the system to operate could only strongly increase without the precious metal reserves being able to follow the same curve. Furthermore, between 950 and 1050, the empire mainly expanded across territories either marked by a very largely de-monetised economy (Bulgaria),[182] or affected by a monetary crisis (the provinces won from Islam).[183] The combination of a rapid expansion of the area to supply with gold coins with the need to increase the *per capita*

180 See the sharp rise in the activity of Constantinople's mint in the second half of the tenth century, according to the tables of Füeg, *Corpus of the nomismata*. The average number of dies used went from twenty or so coins per year at the start of the eighth century to nearly three times as many. In addition to the conquests that may account for the beginning of the boom, these new resources may certainly be explained by the *strateia* being subjected to taxation; see Lemerle, *Cinq études*, 265–267, and Oikonomidès, *Fiscalité et exemption fiscale*, 141. Of course, it happened previously that the actual service might be replaced by a payment in cash; indeed, it is its deliberately systematic appearance that distinguishes the reform attributed to Nicephorus Phocas.

181 The *strateia* appears in most of the exemption lists conceded to the monasteries; Oikonomidès, *Fiscalité et exemption fiscale*, 293.

182 Whence an interval of fifteen years or so between the conquest and the imposition of taxation paid in gold by John the Eunuch, a reform that gave rise to a large-scale revolt; J.C. Cheynet, *Pouvoir et contestation à Byzance (963–1210)*, Byzantina Sorbonensia 9 (Paris: Publications de la Sorbonne, 1990), 49, 388.

183 The Islamic world's issues of silver underwent a crisis from the second half of the tenth century; see P. Balog, "History of the Dirhem in Egypt from the Fatimid Conquest until the Collapse of the Mamluk Empire," *Revue numismatique* 6th series 3 (1961), 109–146; and H. Mitchell Brown, "Early Silver Coinage of the Fatimids," *Rivista italiana di numismatica* 86 (1984), 61–73; also more recently, L. Treadwell, *Buyid Coinage: A Die-Corpus (322–445 ah)* (Oxford: Ashmolean Museum, 2001), XII–XV.

availability of coinage for the tax-payer to be able to meet his obligations towards the fisc is the key to understanding the devaluation that struck the Byzantine coinage from the reign of Nicephorus Phocas onwards.[184] Now that it is possible to quantify it more accurately, it even seems to me that the second factor played a greater role than the first. It might also be that this new tension over precious metals led to the abandonment of the highly fiduciary character recognised for the bronze coin in the previous era in a reverse context. The anonymous class A *folles* that were issued in huge quantities were much heavier coins and their sub-series show metrological fluctuations that should be read as mirroring parallel fluctuations in the relative prices of gold and bronze.[185] Whatever may be the case for this last point, it contextualises Isaac I's famous phrase, as he refused to listen to those advising him to extend the empire's borders even further: "for such annexations, there is need of much money and valiant arms and of a sufficient reserve, and (…), when this is not the case, to increase is to decrease."[186]

A second important factor is the challenge to the closed circuit of the main monetary fluxes. The main point here concerns the alteration of the recruitment system. The establishment of the army of foreign mercenaries probably did not cost the state much more than its professional troops, recruited from within the empire,[187] but this development implied a regular massive outflow of cash beyond the imperial frontiers, since part of the gold intended for military pay was leaving the circuit of the Byzantine economy, as illustrated by the Byzantine seals found in London, or the Scandinavian imitations of imperial coins.[188] In the second half of the eleventh century, the tributes increasingly paid to the empire's neighbours reinforced the process, but I do not believe they reached the same weight as that of military pay. What was being challenged here was not only, nor even foremost, the balancing of the budget, but

184 See above, n. 180.

185 Ivanišević, "Interpretation and Dating of the Folles," 19–42.

186 Michel Psellos, *Chronographie*, ed. É. Renauld (Paris, 1928), II, 114, l. 11–15: … οὐ τῇ Ῥωμαίων βασκαίνων ἡγεμονίᾳ τῶν ταύτης ὁρίων αὐξανομένων, ἀλλ᾽εἰδὼς ὡς δεῖ ταῖς τοιαύταις προσθήκαις καὶ χρημάτων πολλῶν καὶ γενναίας χειρὸς, καὶ ἀποχρώσης ὑποδοχῆς, καὶ τοῖς μὴ οὕτως ἔχουσιν ἡ πρόσθεσις ὑφαίρεσις γίνεται.

187 Lemerle, *Cinq études*, 302–304.

188 J.C. Cheynet, "Les sceaux byzantins découverts à Londres," *Studies in Byzantine Sigillography* (2003), 85–100; C. Morrisson, *Le rôle des Varanges dans la transmission de la monnaie byzantine en Scandinavie*, *Les pays du Nord et Byzance* (*Table Ronde, Upsala, 1979*) (Upsala: Zeitler, 1981), 131–140; M. Hendy, "Michael IV and Harold Hardrada," *Numismatic Chronicle* 7th series 10 (1970), 187–197, reprinted in *The Economy, Fiscal Administration and Coinage of Byzantium*, Variorum Reprints (Northampton: Variorum, 1989), X.

instead monetary circulation in a closed circuit, a characteristic of the previous era, and therefore the tax system's ability to persist on the sure foundation of a more or less perennial metallic stock. Finally, from the tax-payer's perspective, it is important to bear in mind that an insufficient supply of cash automatically triggered an increase in tax pressure, as it became more difficult to obtain the necessary coins to fulfil one's fiscal obligation. We will obviously refer to the case of the privilege granted by Constantine IX to the monastery of Iviron: the fabulously wealthy convent received a pension in coins in order for it to be able to meet its fiscal obligation. As a matter of fact, the problem was not the amount to be paid, but rather the effective availability of cash to make the payment.[189] The increased tax revolts in the eleventh century must not therefore be seen uniquely as a consequence of the state's nominal demands and that aspect of the problem effectively impaired its ability to solve the crisis.[190]

This crucial importance of the volume of precious metal stocks in relation to the size of the empire and its population is a significant key to understanding the alterations undergone by the tax system, and more broadly the finances of the eleventh-century imperial state. A first point worthy of note is the increase in requisition procedures, if we are to believe the lengthening lists of exemptions that certain great monasteries obtained.[191] Furthermore, from the reign of Basil II (976–1025), a new interest in the development of crown land clearly enters the picture, as the emperors restored vast public estates not only by appropriating them in conquests, but also by modifying profoundly their attitude towards fiscally unproductive lands. Previously sold to private individuals with an initially very low tax burden, these lands were thereafter managed directly by the state.[192] Thus paradoxically, at the empire's apogee, the role of taxation in the financing of the empire tended to diminish.[193] Yet beyond this, one primarily notices alterations to the tax system, justified by the tension over monetary mass that we previously illustrated. The most striking aspect is the increasing identification of the tax collector with the beneficiary

189 *Actes d'Iviron, II, Du milieu du XI^e siècle à 1204*, ed. V. Kravari et al., Archives de l'Athos 16 (Paris: P. Lethielleux, 1990), 112.

190 See the compiled data in Oikonomidès, *Fiscalité et exemption fiscale*, 142–145.

191 The obligation to submit to various chores or of accepting the prices fixed by the state for forced transactions (in one way or the other) stems from a same logic. For a breakdown of the requirements, Oikonomidès, *Fiscalité et exemption fiscale*, 99–105, 226.

192 J. Howard-Johnston, "Crown Lands and the Defence of Imperial Authority in the Tenth and Eleventh Centuries," *Byzantinische Forschungen* 21 (1995), 75–100.

193 Even if we must remember that the annuity paid by the state *paroikoi* included the amounts usually deducted elsewhere as tax.

of the tax in the context of a shortening tax product cycle. This reform had a double impact: firstly, the state considerably reduced the quantity of coins essential to the financing of its administration; then, it was not necessarily in the interest of those benefiting from the right to levy taxes for their own sake to demand payment in cash, either because of the critical devaluation that was affecting the currency towards the end of the eleventh century, or by reason of an upward trend in agricultural prices in the following century.[194] Be that as it may, the nature of the levy was no longer the direct concern of the state.[195] At this point one may recall that monetary production seems to have experienced a very strong decrease under Manuel I, the emperor credited with bringing the *pronoia* into general use.[196] Despite clear differences, this system therefore operated on monetary availability, just as the *strateia* once had. In conclusion, the existence of a certain logical progression from one "remedy" to the other should be stressed. The vast, newly set up, state estates were undoubtedly the first lands the revenues of which were allocated to civil servants by way of remuneration, prior to the system being extended to the patrimonies of individual tax-payers.[197]

This development has of course not failed to recall that which in the West led to a drastic weakening of the state in the context of feudalism.[198] The differences are nonetheless patent, as those benefiting from the delegation of fiscal power initially received no other public rights, and the concessions could not be bequeathed. Furthermore, until the end of the empire, the state would be equal to the task of claiming back the conceded rights, sometimes after a very long time.[199] Yet, beyond this particular case, the emperors were able throughout the Middle Ages to establish far-reaching state rights over private properties. In the tenth century, for example, Symeon Metraphrastes denounced the fact that an emperor might decree any land that he crossed an imperial property, compensating its previous owner with other lands, or by

194 Cheynet and Morrisson, "Prices and Wages," 830.

195 See the comments made in N. Oikonomidès, "Title and Income at the Byzantine Court," in *Byzantine Court Culture from 829 to 1204*, ed. H. Maguire (Washington, D.C.: Dumbarton Oaks, 1997), 199–215.

196 Morrisson, "Byzantine Money," 937.

197 See the analysis of the conditions of the settlement of the Normans in the Armeniacs, in Magdalino, "The Byzantine Army and the Land," 29–32.

198 Review of the discussion in Kazhdan, "Pronoia."

199 K. Smyrlis, "The State, the Land and Private Property. Confiscating Monastic and Church Properties in the Palaiologan Period," in *Church and Society in Late Byzantium*, ed. D. Angelov (Kalamazoo: Medieval Institute Publications, 2009), 58–99.

remunerating him with the "right price."[200] The extent and nature of these rights remains controversial, with Alexander Kazhan defending the notion of a true *dominium directum* (or "eminent domain") of the state over the whole territory, and Nicolas Oikonomidès preferring the exercise of classic sovereign rights in the context of a system founded upon private property, according to Roman type.[201] It nevertheless seems apparent that the public prerogatives increased, as notably evidenced by the twelfth-century concessions to the Italians. There were private properties included within the groups of buildings granted, but the emperors invoked the necessity to care for the defence of the state to transfer indefinitely their usufruct to the Italian republics. It does not appear that these were real confiscations through the exercise of a state *dominium directum*, since the ultimate property rights of the original owners of those properties transferred to the Italians were safeguarded. Indeed, we see that when the Italians fell into disgrace, the previous owners asserted their previous rights. But this spoliation was neither legitimised by some crime they would have committed, nor compensated for according to the practice described by Symeon. Quite simply, the emperors manifestly believed that any asset could legitimately be mobilised in the service of the empire.[202] Whatever may have been the legal basis and the exact range of these state rights on private properties, we are compelled to read these practices in a wholly different frame from the dynamic leading in the West to the usurpation of public rights through the so-called feudalization of the society. It is not inconceivable for this development to be ascribed to the system by which individual tax liability was ascertained. As the tax was based upon the value of landed properties, paying one's taxes stood as legal proof of ownership of land. Yet conversely, the tax procedure known as the *hikanôsis* could undermine all right of ownership. Indeed, *hikanôsis* intervened when a comparison between owned properties and taxes paid resulted in a discrepancy in favour of the tax-payer: the state could then legitimately seize the land not covered by the effective tax payment.[203] Lack of payment thus became a lack of right of ownership, with the

200 *Patrologiae cursus completus, series graeca*, ed. J.P. Migne (Paris, 1857–1866), 114, col. 1156A, quoted and commented upon in Kazhdan's article quoted in the note below.

201 Clarification in A. Kazhdan, "State, Feudal, and Private Economy in Byzantium," *Dumbarton Oaks Papers* 47 (1993), 83–100; *contra* Oikonomidès, *Fiscalité et exemption fiscale*, 47.

202 Detailed study in K. Smyrlis, "Private Property and State Finances. The Emperor's Right to Donate his Subjects' Land in the Comnenian Period," *Byzantine and Modern Greek Studies* 33 (2009), 115–132.

203 See the analysis of the emperor Nicephorus I's manoeuvres in Oikonomidès, *Fiscalité et exemption fiscale*, 27–28. The Marciana Treatise best expresses this idea by emphasizing

state as master of any land without a legitimate owner. Now, the habit contracted at the end of the eleventh century of modifying significantly the tax scale from one individual to another thereafter equipped the emperors with a mighty weapon to appropriate private land.[204] Of course, the practices that may be observed in the twelfth century were on a very different scale, yet I do not think it impossible for practices such as that of the *hikanôsis*, inherently linked to the logic of *ad valorem* tax, to have been at the origin of this increasing affirmation of state rights over private lands.

7 Conclusion

During the high Middle Ages, the Byzantine fiscal system seems to have adopted a quite consistent ideal of a tax paid in gold, and levied by tax collectors who did not directly benefit from their collections, which product was intended to circulate over great distances between the areas of levy and investment. The alterations to this norm seem to have been for the most part an answer to issues relating to the availability of precious metals. The foremost purpose of this system would have been to respond to the double political imperative of maintaining as close control as possible over the provinces and of enabling the perpetuation of the emperor's position as the unique, or at least primary, source of prosperity and legitimacy for the elites. These therefore remained above all members of a service aristocracy.[205] In response, this dominant position played an essential role in the perpetuation of the system by enabling the state to harness a substantial portion of the aristocracy's riches in order to channel the necessary precious metal towards its mints, and by making it possible for emperors to extend their rights over all private properties. Paradoxically, the empire's preferred mode of resource exploitation

that surtaxes should be clearly separated from the base tax, as, unlike the latter, the sums they represent do not confer any right to land ownership; ibid., 77.

204 I recall here the e*pibole* system: ibid., 56–59, with the classic N. Svoronos, "L'épibolè à l'époque des Comnènes," *Travaux et Mémoires du Centre d'histoire et de civilisation de Byzance* 3 (1968), 375–395. This *de facto* introduced tax rates that varied widely from one tax-payer to another through the implementation of a new system for verifying the balance between patrimony and tax. For its impact on the Komnenos' tax system, see A. Harvey, "The Land and Taxation in the Reign of Alexios I Komnenos: the Evidence of Theophylact of Ochrid," *Revue des Études Byzantines* 51 (1993), 139–154, which illustrates (p. 151) that the new system legitimised the confiscations.

205 On this point, see J.C. Cheynet, "L'aristocratie byzantine (VIII^{e}–XIII^{e} siècles)," *Journal des savants* (July–December 2000), 281–322.

operated best in the context of a relatively confined territory, and in an economic context in which commercial exchanges did not compete too fiercely with public finances over the use of available cash. The system consequently probably favoured both the re-establishment of the empire in the wake of the serious crisis of the seventh century, and, conversely, played a key role in provoking the catastrophe experienced by Byzantium during the eleventh century.

CHAPTER 11

State, Aggregation of the Elites and Redistribution of Resources in Sicily in the Eleventh and Twelfth Centuries

Proposals for a New Interpretation

*Annliese Nef**

Sicily was a province of the Byzantine Empire until 827, whereafter it progressively came under Islamic domination (in 976 the eastern part of the island would come to be definitively controlled by the Arabo-muslims), before being conquered, between 1061 and 1091, by troops that came from Calabria under the leadership of the Hautevilles, who claimed a Norman origin. This history provides a particularly fertile field for investigation in the framework of this volume. Indeed, the presence in the island of groups who, prior to the mid-eleventh century, had experienced systems in which the State played an important role, and of others who originated from Southern Italy, where regions presented varied situations, yet where feudal trends were developing, suggests the possibility of bringing to light convergences between Islamic State and elite organisation and feudalism.[1]

* Translation by Abigail Jamet.

1 The slow rhythm of these conquests was not irrelevant to what would follow, and was probably of greater consequence than the number of conquerors (or conquered). There is no available overall figure for any of these groups, but we may note the different components of the population in the eleventh and twelfth centuries: on the "Greeks" see V. von Falkenhausen, "The Greek Presence in Norman Sicily: The Contribution of Archival Material," in *The Society of Norman Italy*, ed. G. Loud and A. Metcalfe (Leiden: Brill, 2002), 253–288; on the "Normans" see L.R. Ménager, "Pesanteur et étiologie de la colonisation normande de l'Italie" and "Inventaire des familles normandes et franques émigrées en Italie méridionale et en Sicile (XI^{e} –XII^{e} siècles)," *Roberto il Guiscardo e il suo tempo, Prime Giornate Normanno-Sveve, Bari, 28–29 mai 1973,* Fonti e Studi del Corpus membranarum Italicarum XI (Rome: Il centro de ricerca, 1975), respectively 189–215 and 260–390, reprinted in idem, *Hommes et institutions de l'Italie normande* (London: Variorum, 1981); on the "Lombards" who arrived in the wake of the Aleramici and who settled in Sicily in the twelfth century, see I. Peri, "La questione delle colonie lombarde in Sicilia," *Bollettino storico-bibliografico subalpino* 57 (1959), 253–280; and H. Bresc, "Gli Aleramici in Sicilia: alcune nuove prospettive," *Bianca Lancia d'Agliano. Fra il Piemonte e il Regno di Sicilia, Atti del Convegno, Asti-Agliano, 28–29 avr. 1990*, ed. R. Bordone, Ricerca di Storia locale 4 (Alessandria: Edizioni dell'osso, 1992), 147–165. The Arabo-muslims

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Until now this question has mainly been addressed from a specific angle: that of the supposed transition from one system to another (the Weberian notion of an ideal-type[2] is undoubtedly of great utility here, to avoid pointillistic criticisms based on the differences between documented realities and a model).[3] To take up the distinctions that Sandro Carocci and Simone Collavini developed, the conquest led by the Hautevilles and the progressive installation of the new dynasty was accompanied by the passing from an ideal-type in which the role of the State, of state fiscality and administration, was central to both the extraction of resources and to the aggregation of elites (the Islamic State),[4] to a feudal model (generally attributed to Sicily under the Hautevilles), in which land grants became the major instrument of these two processes.

Indeed, historians agree in considering the Sicily of the Hautevilles as a transitional stage between an Islamic State and a feudal State, presenting a certain number of specificities: a central administration, writing documents in Arabic and in Greek, co-existed with feudalism;[5] and a Latin-speaking aristocracy, descending from the eleventh-century conquerors, revolved around the sovereign along with eunuchs of Arabo-muslim origin, and also Greek-speaking and Arabic-speaking Easterners. This divided state of affairs nevertheless has given rise to opposing interpretations depending on whether the maintaining of previous structures or strong discontinuity from the Islamic period is emphasised. Thus, for some, Sicily in this period was already fundamentally connected with the Latin West on administrative, institutional and political levels, while

(an expression which here describes all the individuals belonging to a culture that defined itself as of Arabic language and Muslim religion, but which included non-Arabophones and non-Muslims), made up the majority of the population, and were for this reason less defined as a "group"; see A. Nef, *Conquérir et gouverner la Sicile islamique aux XI^e^ et XII^e^ siècles*, B.E.F.A.R. (Rome: École Française de Rome, 2011), Introduction.

2 For more on this central concept of Weber's, we simply refer back to the enlightening presentation of S. Kalberg, *Max Weber's Comparative-Historical Sociology* (Chicago: University of Chicago Press, 1994), *cc.* 3 and 4.

3 The names given to these ideal-types may vary: Weber would probably have spoken of patrimonialism and feudalism.

4 If we adopt the concept of ideal-type, we do not necessarily adopt what Max Weber put forward concerning the Islamic state. On this point, see *Max Weber and Islam*, ed. T.E. Huff & W. Schluchter (New Brunswick, N.J.: Transaction Publishers, 1999). There is still work to be done on the definition of the medieval Islamic State, and the research currently under way, notably in Egypt, ought to alter our understanding perceptibly.

5 A good representative of such a point of view is Carlo Alberto Garufi, a prolific medievalist who lived across the nineteenth and twentieth centuries.

preserving some elements of Islamic culture;[6] for others, it was a true case of hybridity, be it considered as the fruit of the successful co-existence of groups and of referential systems,[7] or else as the manifestation of a somewhat contradictory synthesis, bound to disappear rapidly.[8] Finally, it has recently been suggested that, beneath the appearance of an efficiently operating system mobilising Islamic background elements, there lay deep tensions, and that this elaboration was a kind of theatre that masked a system that above all rested upon the reducing to servitude of the Arabo-muslims, subjected to an increasingly violent Latin and Christian domination.[9] This interpretation differs from the first in that it assumes the Hautevilles' intentional manipulation of Islamic elements with the aim of concealing the reality of the intolerant domination that they were establishing. It also fundamentally agrees with the first: the Sicilian order was feudal and enslaving, but bedecked with Islamic trumpery.

Over the course of the past decade this area has not produced any notable reinterpretations, which seems to us the result of the dead ends that follow from this approach.[10] We therefore suggest an interpretative model which we believe allows us to progress. Existing interpretations all rest upon a confusion between the identification of elements as originating from a specified language and/or administrative tradition (itself problematic), and the characterisation of the practicalities of extracting and of redistributing resources in twelfth-century Sicily. We should distinguish the systemic elements, those that generated the cohesion of Sicilian society (and their accompanying

6 A. Marongiu, "Concezione della sovranità di Ruggero II," in *VIII centenario della morte di Ruggero II. Atti del Convegno Internazionale di Studi Ruggeriani, Palermo, 1954* (Palermo: Scuola linotypografica Boccone del Povero, 1955), I, 213–233; and C. Cahen, *Le régime féodal de l'Italie normande* (Paris: Geuthner, 1940).

7 F. Giunta & U. Rizzitano, *Terra senza crociata* (Palermo: Flaccovio Editore, 1967).

8 This is a stance that Henri Bresc defended, notably in "De l'État de minorité à l'État de résistance: le cas de la Sicile normande," in *État et colonisation au Moyen Âge et à la Renaissance*, ed. M. Balard (Lyon: La Manufacture, 1989), 331–347; and "Féodalité coloniale en terre d'Islam. La Sicile (1070–1240)," in *Structures féodales et féodalisme dans l'Occident méditerranéen: X^e–XIII^e siècles. Bilan et perspectives de recherches, Rome, 10–13 oct. 1978,* Collection de l'École française de Rome 44 (Rome: École française de Rome, 1980), 631–647.

9 This thesis was defended in particular by J. Johns, *Arabic Administration in Norman Sicily. The Royal Dīwān* (Cambridge: Cambridge University Press, 2002).

10 Somewhat similar suggestions have been put forward by E.I. Mineo in *Nobiltà di Stato. Famiglie e identità aristocratiche nel tardo medioevo. La Sicilia* (Rome: Donzelli, 2001), but these have not been picked up on until now, perhaps because the author seemed to be focussing on the end of the Middle Ages.

discourse),[11] from those which are not systemic from this perspective.[12] In this framework, the concept of hybridity seems much too vague and does not sufficiently distinguish between what gave structure and sense and what did not; descriptive, but hardly explanatory. Furthermore, one must abandon any teleological point of view, any notion that would posit the island's evolution towards feudalism as unavoidable.[13]

Let us say from the outset that studying eleventh- and twelfth-century Sicily does not allow us to show that systems with diverging logics can co-exist in the matter of extracting resources, for even a system which borrows elements from distinct systems with distinct logics,[14] as the Sicilian State did under the Hauteville dynasty, combines these elements according to a single logic. This logic is expressed in the society's own interpretation of the system, upon which historians should concentrate.[15] Nevertheless, what the example of eleventh- and twelfth-century Sicily will allow us to broach is the matter of coexistence in a society of groups each with a distinct *habitus*.

We will therefore start by setting out how the system that the Hautevilles set up functioned, retracing its developments over the course of the two centuries of our study. This approach has no intention of ignoring the question of the actors who intervened in the realm of the State, whether by constructing it, interfering with it, or contesting it. Yet, these actors were informed not so much by a "mentality" or by a "culture" (in themselves problematic concepts easy to

11 Something that Pierre Bourdieu called sociodicy, even if there are, of course, far fewer medieval sources than those which we have at our disposal to trace the history of the so-called modern State.

12 Jeremy Johns' analysis does not share this mistaken stance, but we have a different interpretation of the system of resource extraction.

13 This teleological concept was reinforced by the fact that the expulsion of the island's Muslims to Lucera also had a retrospective effect: the breakdown of the Muslims' situation throughout the reign of the Hauteville ought to have heralded it.

14 J. Haldon, *The State and the Tributary Mode of Production* (London, New York: Verso, 1993); and C. Wickham, *Framing the Early Middle Ages* (Oxford: Oxford University Press, 2005), 60; the latter agrees with Haldon over the fact that the medieval systems of resource extraction were in fact different forms of a single system based upon the extraction of peasant surplus, and he emphasises that an army was rarely solely "land-based" or solely "tax-based."

15 The article in this volume above by Sandro Carocci and Simone Collavini underlines that there was no system exclusively centred on tax, or exclusively centred on land income. Nonetheless, a system of resource extraction is always accompanied by a justification of its operation, which, in a more or less explicit and theoretical way, gives it meaning. This latter necessarily emphasised one or other aspect in order to justify the extraction.

essentialise), as by a *habitus*,[16] which might influence their position and yet was likely to evolve and which was especially susceptible to variations when in contact with a particular reality and its accompanying discourse (here that of Sicily in the eleventh and twelfth centuries) – a reality which also evolved over time, as the political field was transformed. The specificity of these particular *habitus* arises from the fact that, at least initially, they were closely tied to another social reality, which the actors experienced before arriving on the island. The only way to bring them to light is to study not only the central administration's Arabic and bilingual Arabo-Greek documents, but also the documents in Greek and Latin preserved in the charter collections, and eventually the literary texts in these languages (in particular the chronicles). Here we will compare the charters in Latin with the royal chancery diplomas.

First, going along with Max Weber, these contrasted *habitus* refer back to several ideal-types carried within different groups, and in particular (most perceptible in the sources) in the government officials serving the sovereign on the one hand, and on the other some of the Latin *milites*.[17] In some ways, their ideas came up against one another and constituted the opposites that structured the political field – which does not exclude the existence of a range of positions that the field's very [own] logic most often condemns to exclusion from the sources. Thus one might say that under the Hautevilles the Sicilian political field saw groups opposing each other whose coherence did not rely upon a "Latin" or "Islamic" dimension (indeed the eleventh- and twelfth-century sources do not refer to them this way), but instead upon the fact that they defended different and sometimes contradictory concepts and/or interests at the heart of the political field.[18]

This study will therefore treat first the institutions in Sicily that enabled the extraction of resources – that is to say, the administrative organs specifically put

16 Bourdieu, *Le sens pratique* (Paris: Minuit, 1980), 87–110; and "Habitus, code et codification," *Actes de la recherche en sciences sociales* 64 (September 1986), *De quel droit?*, 40–44.

17 In order to go any further one should carry out a systematic lexicological study of the Latin charters and the Latin and Arabic diplomas; one would then clearly see that there is no overlap between the languages used and the definitions of the groups.

18 For P. Bourdieu's definition of "the field," see *Les règles de l'art. Genèse et structure du champ littéraire* (Paris: Seuil, 1992). The expression "champ de pouvoir" may lend itself to a useless debate on its limits, whereas we understand the expression "political field" as including all questioning or notions related to politics, understood as the reflection of where consensus lay, or ought to lie in the normative organisation of life in society. This therefore included debates on the nature and functioning of the State, and, something that we will dwell upon here, on tax levies and the redistribution of wealth, in addition to the rôle played by the State and the elites in this process.

in place for this purpose and the principles to which they answered – and also highlight the actors that implemented this, and the accompanying practices and representations. Secondly, we will investigate the recurrent tensions and antagonisms between the actors of these institutions, themselves in constant evolution, and the representatives of groups whose *habitus*, although they too belonged to the field of power, came to contradict the operation of these institutions.

The three points that we will broach are closely linked, none preceding the other in the literal sense, all being part of the same genesis of the Sicilian state under construction in the eleventh to twelfth centuries. For lack of space, we will assume knowledge of a certain number of arguments that have been put forward by others elsewhere and will only allude to them.

1 Extraction and Redistribution of Resources

First issue: the elites' access to revenues derived from land. If a section of the elites in power probably lost the resources to which they had until then had access (notably because they left the island) – this is a rather poorly documented development largely apparent through the allocation of revenues to the newly arrived – some revenues must have stayed in the same hands, as far too rare documents suggest.[19] As for the concessions granted to the newly arrived, they took the following form: grants were made of men (i.e., the revenues derived from these men), whose names are listed[20] but the limits of the lands are not specified, nor, except in two cases,[21] the amount and nature of the revenues they provide. This only makes sense if we suppose either that these revenues were recorded elsewhere, in this case locally – since the documentation we have at our disposal was produced by the royal chancery (primarily in Latin or in Greek) prior to the 1140s, and then after this date by the central administration, the *dīwān*, in Arabic or bilingually in Arabic and Greek;[22] or

19 In a diploma dating from 1178 and relating to the archbishopric of Monreale, we find several lists included of men linked to the name of an individual, of Arabo-muslim name: see Nef, *Conquérir*, 411–412. This suggests that a certain number of previous fiscal concessions remained in the same hands. The very fact that concessions made to newcomers were in the same form suggests that this method was inspired by pre-existing practices.

20 In Arabic, this type of document is called *jarīda*.

21 In 1095 and in 1177 (S. Cusa, *I diplomi greci ed arabi di Sicilia pubblicati nel testo originale*, 1 (Palermo: Stabilimento tipografico Lao, 1868–1882); reprinted by A. Noth (Cologne-Vienne, 1982), pp. 1 and 111 respectively); in both cases the amount indicated is taken as a whole.

22 For a study of the *dīwān*, see Johns, *Arabic Administration*. Here we take up the author's idea that the *dīwān* as it operated under the Hautevilles dates from the years 1130–1140.

that what was being taxed was a theoretical unit of measurement which would refer more to a quantity of production than to an area. These two hypotheses are not mutually exclusive.[23] Similarly, the limits that the king's representatives, or members of the central administration, plotted in diplomas of concessions or verification of limits, the *raḥals* or *casales*, were at least as much, if not more so, those of fiscal units than land boundaries.[24]

Such a system went hand in hand with a population primarily made up of owners and autonomous rural communities.[25] It supposes that the apportioning of tax, globally determined by the rural community, was managed in detail at the level of the village community, whose members were bound by fiscal solidarity, in connection with the local State representatives (cf. *infra*). These characteristics were accompanied by peasant access to the land depending largely upon local custom, which explains why it was never specified. In a way the prevailing rule was as follows: the working of the land, to which one had access through rules in force in the local rural community, amounted to a right of ownership of land subject to tax. However, there were distinct statuses within the population that reflected the different relations to tax and to the State.[26]

23 For more on all these points, see A. Nef, "Conquêtes et reconquêtes médiévales: la Sicile normande est-elle une terre de réduction en servitude généralisée?" *Les formes de la servitude: esclavages et servages de la fin de l'Antiquité au monde moderne, Actes de la table ronde de Nanterre, 12 et 13 déc. 1997*, *mefrm* 112/2 (2000), 579–607. The unit was the *zawj* or the *parrichiata*; it was probably the equivalent of the manse. See also Nef, *Conquérir*, 481–507.

24 The registers that recorded these delimitations were called *dafātīr al-ḥudūd* ("books of the borders"). For more on this point, see Nef, *Conquérir*, 413–427.

25 We are deliberately simplifying here. It seems that settling on a land belonging to a fiscal regime bestowed the status of taxpayer upon the farmer. See the hypotheses set out in A. Nef and V. Prigent, "Contrôle et exploitation des campagnes en Sicile: le rôle du grand domaine et son évolution du VIe au XIe siècle," in *Late Antiquity and Early Islam: Continuity and Change in the Mediterranean 6th–10th century ce*, ed. A. Delattre et al. (Princeton: Darwin Press, forthcoming). Furthermore, it is possible that a part of the village's land did not pertain to a logic of appropriation but rather to one of rotating exploitation, in the context of a rural world with room for increased population, as suggested by the authorities' preoccupation with the movement of peasants who left one land for another, and with the fact that a certain number of documents seem to record a recent peasant immigration from Ifrīqiya. This relatively flexible access to the land brings to mind the procedures brought to light for southern Italy; see S. Carocci, "'Metodo regressivo' e possessi collettivi: i 'demani' del Mezzogiorno (sec. XII–XVIII)," in *Ecritures de l'espace social. Mélanges d'histoire médiévale offerts à Monique Bourin*, ed. D. Boisseuil et al. (Paris: Publications de la Sorbonne, 2010), 541–556.

26 The *rijāl al-jarā'id* were liable to pay tax to the State or to the State-designated concessionary; the *muls*, who were landless, were integrated into the village community, enjoying a

Such a situation reflected a world that was not fully populated and where there was demand for cultivators. Far be it from us to seek to extend this system to the entirety of Sicily, for there are a limited number of documented areas, and we have no idea what was the case outside these. Nevertheless, the diplomas issued by the central administration all reflect this reality and these practices.

Tax could be broken down into the *kharāj* (a land tax, paid in kind when exceptionally it is specified), and the *jizya* (a *per capita* tax, paid in cash), which carries the same name as the tax previously paid by non-Muslims, but which from then on was levied from Muslims and Jews.

Therefore the Hautevilles' pragmatism, and the continuities with the previous system appear to have been important in the area (the royal domain and royal grants) of central administration intervention in Sicily.

Nevertheless, there was no lack of tensions surrounding the extraction of resources. The term *census*, which Geoffrey Malaterra, the first chronicler of the Latin conquest of the end of the eleventh century, used in Latin to describe the *jizya*, reveals the challenge of conceiving new terminology, yet the passage in which he uses this term is also instructive. In it he relates a revolt that in 1079 shook the region of Iato and was opposed to the implementation of this tax.[27] Indeed, the incident reflects a tension surrounding the *per capita* tax, which those subjected to it interpreted as the sign of an unjustified religious inferiority (*jizya*) and which those who levied it, and especially those who benefitted from it, interpreted as a sign of, generically speaking, peasant submission (*census*).[28]

Similarly, the lists of names of peasants who received concessions may have allowed diverse interpretations: in the case of the concessions of State tax revenues, did the beneficiaries not see it from their perspective as a concession of much wider rights, or at the very least, as the symbol of a subjection that

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right of ownership as long as they were installed on land subject to tax; the *maḥallāt* seem to have settled on landed estates and not be part of the village community. These last two categories are in theory not listed on the *jarā'id*. Such may recall the Islamic logic according to which the tax status of the farmer theoretically depended on the status of the land that he was cultivating. This avoided the State missing out, unless it granted the land or the levying of the tax.

27 *Jugum nostrae gentis abhorrentes statutum servitium et censum persolvere renuntiant* ("Hating the yoke imposed by our people, they refuse the servitude established and the payment of tax"): Geoffrey Malaterra, *De rebus gestis Rogerii Calabriae et Siciliae Comitis et Robertis Guiscardi ducis fratris eius*, ed. E. Pontieri, *Rerum Italicarum Scriptores* 5/1 (Bologna: 1927–1928), 69. For interpretation of this passage, see Johns, *Arabic Administration*, 37–38.

28 It is true that the date is early and that the misunderstanding might have become less acute over time, but it is nonetheless revealing.

extended far beyond the grant of tax revenues? Indeed, this is what is suggested by a comparison of the terms in the different languages used to describe individuals to whom taxes were granted: for example, *villanus*, widely used in Latin, refers to quite a clear subjection, as opposed to the terms used in Arabic.[29] This may explain the peasant movements that, if we are to believe the royal documents, seem to characterise rural Sicily, and also partly explain the revolts of the end of the century, according to the Pseudo-Falcand.[30] The regular reminder of the State's role as guarantor of the granted men's status in the preambles to the *dīwān*'s documents seems to support this.

2 What Kind of State in Eleventh to Twelfth-Century Sicily?

The extraction of resources was closely related to the shape of the State and its evolution beyond the so-called Norman conquest. As is often the case in the context of conquest and governmental change, the Sicilian State from the eleventh century was, very broadly speaking, characterised by continuities but also by developments and by ongoing construction. From this point of view, it is significant that the borrowings that contributed to this elaboration were in great part inspired by contemporary Islamic practices and institutions.[31] It was thus not only a matter of maintaining what existed, but rather of having recourse to solutions that differed from what the conquerors had up until then been led to implement. At the same time, it has been demonstrated that the real implementation of these new solutions dated from the second generation, that of Roger II, which suggests an evolution of the *habitus* of the directing elites.

29 Nef, "Conquêtes et reconquêtes médiévales."

30 To whom the *Epistola ad Petrum Panormitane Ecclesie Thesaurarium de calamitate Sicilie* is attributed, in which he suggests that Sicily would come under the authority of Emperor Henry VI, because the Latins, unable to refrain from oppressing the Saracens, provoked their revolt and the divisions that would weaken the island's population (*At vero quia difficile est Christianos in tanto rerum turbine, subato regis timore, Sarracenos non opprimere, si Sarraceni multis illorum iniuriis fatigati ab eis ceperint dissidere et castella forte maritima vel montanas munitiones occupaverint*; *Lettera a un tesoriere di Palermo*, ed. and trans. S. Tramontana (Palermo: Sellerio, 1988), 128–129).

31 See Johns, *Arabic Administration*; let us nevertheless emphasise the need to qualify the notion outlined by the author according to which Sicilian administration would have been marked by a total discontinuity, leading to its reconstruction from 1130–1140. For another point of view, see Nef, *Conquérir*, 251–268.

The tax system was at the heart of the Sicilian State's policies: as revealed by the charter collections, it represented the main part of the state's functions. Indeed, justice itself only ever appears in these in connection with the tax system. The pace at which the central administration was built is now quite well known: up until Roger II's accession to kingship (and even up until the 1140s,[32] a decade later), continuities are combined with the import from Calabria of some polyfunctional offices;[33] these then gave way in an overhaul, which was followed by a centralisation, Arabisation (linguistically) and Islamicization (in administrative models) of the administration. These borrowings were, over time, partially translated (in the original, linguistic, sense of the word) and yet barely transformed. On the other hand, the local functions of representatives of the sovereign showed much more continuity.[34] Similarly, rural communities maintained, at least in part, strong autonomy, something unlikely to have been put in place with the conquest. Finally, from the 1160s, new offices and new administrative organs exclusively designated in Latin and/or in Greek appeared (Arabic was maintained in parallel, but especially continued to be one of the major languages of fiscal documents).[35]

Thus everything happened as if, for each post-conquest generation, there corresponded, in the higher reaches of government a relationship to the context that did not fundamentally transform the conception of central administration that appeared from the start (cf. *infra*): from the taking up of a system somewhat shaken by the internal divisions that emerged at the end of the Islamic period, to its reform inspired by contemporary Islamic practices, to its translation into comprehensible (or at the very least pronounceable) terms by the Greek-speakers and Latin-speakers.[36]

The diplomas that this administration produced conveyed a conception of power quite far removed from that which one might expect in a setting

32 The *dīwān al-maʿmūr* is attested to for the first time in 1141, and the *dīwān al-taḥqīq al-maʿmūr*, its subdivision responsible for investigations, in 1149.

33 Johns, *Arabic Administration*, 64–68.

34 Nef, *Conquérir*, 283–299.

35 *Dīwān al-maʿmūr* and *dīwān al-taḥqīq al-maʿmūr* were translated by *sekreton* from the beginning, and at least up until 1168, when the expression *megalon sekreton* or *to mega sekreton* appeared to describe them and distinguish them from the *duana baronum*/*sekreton tôn apokopôn* (without an Arabic equivalent) which operated in the peninsula, except for Calabria. The use of the expression *duana de secretis* to translate these expressions cannot be dated with any certainty. The *camerarius regii palatii* appeared in the 1160s.

36 Nef, *Conquérir*, 269–280.

described as feudal. Accordingly, the documents established by what was referred to as the island's *dīwān* were drawn up in Arabic, or more often in Arabic and Greek. Similarly, the preambles to these acts insisted upon the non-personalisation of power; the order (*amr*) which gave birth to the diploma might have been qualified (notably as "Rogerian" or "Williamian" issue, without this being systematic), but the *dīwān* was always the subject of the dispositive, unless it was the *majlis al-sāmī* ("the high council").

Thus, progressively, an original Sicilian government was put in place, conceived of as a centralised and depersonalised administrative structure, assuming a central role (the *dīwān*) and marginalising the members of the elites opposed to this idea. This was all the more so since the developed fiscal mechanisms required a linguistic and technical knowledge that limited the possible inclusion of anyone who did not master it in the field of government, thus making it the prerogative of a "State nobility", a body of Arabophone administrators. Must we then understand that the *habitus* of the non-Arabophone aristocracy was not liable, all exceptions aside, to evolve due to its inability to subscribe to a sociodicy[37] expressed in Arabic?[38] To do so would be to overlook that a significant part of this latter was expressed in Latin – that is everything touching upon fiscal concessions, to the *casal* (cf. *supra*) – and that the sources showcase Latins who joined with the eunuchs and the court even though they could not join this body of experts; further, one cannot help but think that the Pseudo-Falcand's positioning was not unique.[39] We must therefore conclude that there were no untranslatable notions, nor unsurmountable obstacles. Here we reach the limits of medieval sources, for there were other ways besides writing through which one might be convinced to support the dynasty. In addition, this sociodicy was not only expressed in the diplomas that the *dīwān* established. The king's sovereignty and centrality were described and worded in the kingdom's three languages, even if this was not true of the fiscal administration and the government nobility that ran it. At the same time, one should nevertheless emphasise that this multilingualism might have hindered the development of a sociodicy that the Sicilian elites held in common.

Another important question addresses the motivation for this state construction. How was this elaboration conceived (and thus justified) by those who promoted it? Is it conceivable that it was only aimed at obtaining the support of the island's Arabo-muslims at a reduced cost? Although it is not

37 Term used by Bourdieu to define the culture in so far as it justified the existing social order; also above, n. 11.

38 See Nef, *Conquérir*, 143–145 and 177–191.

39 See above, n. 30.

possible to go into much detail here, a number of elements should nevertheless be emphasised. It is certain that part of the motivation for this permanent elaboration lay in the prestige that sovereigns derived from it, by resorting to models that all had imperial pretensions.[40] But is this alone enough to explain these choices? Here as elsewhere we must turn to a multiple causation: outward prestige counted for something, as did the aggregation of steadfast support in close proximity to the king, but fiscal motives cannot have been unrelated to this creation. The efficiency of such a system has been called into question, with the suggestion that it had more to do with public relations and the will to bring about consensus within the population than with any real preoccupation with the tax administration.[41] The matter of a system's efficiency is indeed important, but if we seek to broach it some pitfalls have to be avoided. One can only evaluate the efficiency of a practice if one knows its real or its imagined purpose in the eyes of its contemporaries (as opposed to current criteria), which is rarely the case for the Middle Ages. Medieval Sicily was no exception to the rule. One might simply suggest that the system of tax concessions from which the *milites* benefited seems to have fulfilled its role, since the Hautevilles were able to face numerous military operations (both from outside and from within). However, it is difficult to go beyond these general points without falling into a vacuous functionalism. Still, generally speaking, one should probably always avoid thinking that the desire to obtain a consensus (in this case within the elites, for it is difficult to imagine that the peasants would be preoccupied with tax documents that had no function) could ever be the sole motivation of an unwieldy and costly undertaking. Nevertheless, it is impossible to establish a hierarchy of priorities, which was itself probably not very clearly established in the eleventh and twelfth centuries.[42]

Due to lacunae in the documentation, it is difficult to close in with any precision on the role that the Latin aristocracy might have played in transmitting this government to a local level, whether by delegation or by the development

40 A. Nef, "Imaginaire impérial, empire et œcuménisme religieux: quelques réflexions depuis la Sicile des Hauteville," in *Cahiers de Recherches Médiévales et Humanistes* 24 (2012), 227–249. The Islamic borrowings were in fact Fāṭimid ones, as clearly shown by Johns in *Arabic Administration*.

41 This is Jeremy Johns' thesis in his *Arabic Administration*, 140–143 and Chapter 11; it can be explained by the fact that the author imagines that the central administration's documents, preserved in the charter collections, were sufficient in themselves. Yet it is patent that they would only make sense if complemented by local archives.

42 As we know, this multi-causality is central to a Weberian stance; see S. Kalberg, *La sociologie historique comparative de Max Weber*, 87–120. We consider it useful for the analysis.

of seigniorial administration. However, some clues suggest that its role was limited.[43] No county was created in Sicily. The seigneury was absent,[44] even if, implicitly, there was service and payment of part of the tax.[45] A key point: because of the language used to write up these acts, the beneficiary of the tax concessions was forced to rely upon an Arabophone mediation in order to make use of them. Such a necessity goes against the concept of delegation of authority inherent to the feudal system. And [even] the (Greek) translation or the (Latin) transliteration of the sole name of the principal administrative entities could not really reduce this distance. The offices with which the greatest concessionaires surrounded themselves (chaplain, notary, seneschal), which are badly documented and whose role was necessarily limited, were very generic.[46]

Of course, there was the preservation, or the development of realities with distinct referential systems, reflecting ideal-types and also *habitus*; these in theory were not very compatible with each other.[47] On one hand, as we said,

43 This is not the place to recall all the elements of a debate that was articulated at the time concerning the importance of feudalisation in Sicily in the period of our study. Claude Cahen described it as limited and close to the circumstances of the Latin states of the East. As for Illuminato Peri, he developed the idea of a first stage of the conquest conducive to a "feudal lottery" (see I. Peri, *Uomini, città e campagne in Sicilia dall'XI al XII secolo* (Bari: Laterza, 1990), which was taken up by F. Maurici, *Castelli medievali in Sicilia dai bizantini ai normanni* (Palermo: Sellerio, 1992), 90–118). On the other hand, there has been the recent reminder that no aristocratic power resting upon a coherent territorial entity which appeared in the eleventh to twelfth centuries stood the test of time; see Mineo, *Nobiltà di stato*, 21–43. This seems logical, since these concessions, which for their beneficiaries equated to land grants, were not such in practice; despite being referred to by expressions such as "my lands" or being objects of donations to monasteries or grants to lesser knights, they in fact most of the time only affected tax revenues. For a new perspective, see H. Bresc, "Le fief en Sicile. Du don gratuit à la structuration de l'État," paper given at the symposium *Fiefs et féodalité dans l'Europe méridionale* (*Italie, France du Midi, Péninsule ibérique*) *du X^e au XIII^e siècle, Toulouse et Conques, 6–8 juillet 1998* (Toulouse, 2002), 75–92.

44 G. Petralia, "La 'signoria' nella Sicilia normanna e sveva: verso nuovi scenari?" in *La signoria rurale in Italia nel medioevo, Atti del II Convegno di studi, Pise, 6–7 novembre 1998* (Pisa, 2004), 217–254.

45 Bresc, "Le fief en Sicile."

46 Ibid., 90–91 and "Gli Aleramici in Sicilia: alcune nuove prospettive," in *Bianca Lancia d'Agliano*, 147–165, esp. 157.

47 This point of view has until now been little studied, for there is little evidence. However, despite some lacunae, the description (by Matthew Bonnellus, for example) of the lifestyle of certain Sicilian aristocrats and their entourage, who opposed the sovereign William I (1154–1166) in the name of the Latin aristocracy's necessary participation in the wielding of power, is revealing.

rural communities enjoyed a certain autonomy, and with new or not so new designations (*vicecomes, stratêgos, ʿāmil*) the king's local representatives developed a polyfunctionality that was probably quite close to what it had earlier been.[48] On the other hand, seigneurial courts (although poorly documented) were set up along with their accompanying offices.[49] In this specific case, we do not come across in the documentation any instances of tension.

For reasons that we will see, Muslim revolts only characterised the end of the period, and in this field peasants seemed to have favoured flight, as we have previously seen, which also suggests that the rural Sicilian world was not fully populated. However, there was at least one Latin revolt that directly attacked the symbols of a State perceived as oppressive. In Palermo in 1161 Matthew Bonnellus and his partisans placed kingship in a difficult position through a combination of destruction by fire of the tax records with systematic attacks against the Arabo-muslims of Palermo, which then extended along to the Val di Noto.[50] We should nevertheless note that the sovereign promoted the re-establishment of these documents, and that his only response to this rebellion was the creation of a council of three *familiares regis*, which Matthew of Aiello soon joined, chosen as the one responsible for this restoration. If the harshness of the repression leaves us with little doubt that the sovereign had felt the reality of the threat, the subsequent measures suggest that this shock was overcome.

This outcome suggests that the construction held as part of its aims and functions that of establishing a minimal consensus within the elites, or at the very least of aggregating them to the sovereign by various devices. At the same time, its operation supposed this minimal consensus.

3 The Aggregation of the Elites

The question of the Sicilian aristocracy's revenues, broached earlier, does not exhaust the analysis of how the elites aggregated. Their access to offices, to their honours and revenues, and their ability to participate in the determination of the kingdom's general politics (a recurrent demand in the sources),[51] are of no less crucial importance.

48 L.R. Ménager, "Introduction" to *Les actes latins de S. Maria di Messina* (*1103–1250*), ISSBN, Testi 9 (Palermo, 1963), 27–42.

49 See above, n. 43.

50 Pseudo-Falcand, *Liber de regno Sicilie*, ed. G.B. Siragusa, FSI 22 (Rome, 1897), 48–49, 69–70, 73.

51 Notably in Pseudo-Falcand, *passim*.

In order to broach this question in a systematic way, one needs, amongst other things, to establish whether overall the elites in place were (i) maintained (ii) integrated into a new system (iii) replaced by conquerors or (iv) another solution was elaborated. Here again, the Sicilian example is instructive: over the course of a century development is marked and seems to map out a series of successive stages.

Here, we will restrict ourselves to the central administration, the closest to the sovereign, the real stake of power struggles, and also the best documented. The prosopographical data is not unlimited, but it nevertheless appears that initially, until Roger II (1091–1112) came of age, it was those close to the Hautevilles, coming from Calabria with the Sicilian Hellenophones, who were promoted.[52] Subsequently, Roger II, especially from his accession to the throne (1130) and up until the end of his life (1154), privileged characters who mastered referential worlds that were as much Byzantine as Islamic, Greek as well as Arabic, whether of local origin or not (the Emir Christodulus, George of Antioch).[53] Thereafter, a new category (or at least new in the sources) emerges: that of the eunuchs, servile, of Arabo-muslim origin, trained in the palace. In parallel,[54] William I and William II, whether they liked it or not, turned to representatives of the Latin elites, the most powerful section of whom was close to the eunuchs and/or in part Islamicised (the Arabophone Matthew of Aiello is a good example[55]), whereas another section made up the circle of the *familiares regis*, the sovereign's counsellors for his general policies. Somehow, the elites evolved at the same time as the island's population,[56] but the choice to

52 For more on this point, see Nef, *Conquérir*, 305–356.

53 For Christodulus, see Nef, *Conquérir*, 310–311, 319–320, 587–588; for Georges of Antioch, one should consult A. De Simone, "Il Mezzogiorno normanno-svevo visto dall'Islam africano," in *Il Mezzogiorno normanno-svevo visto dall'Europa e dal mondo mediterraneo, XIII Giornate normanno-sveve, Bari, 21–24 oct. 1997* (Bari, 1999), 261–293 and "Note sui titoli arabi di Giorgio di Antiochia," in *Byzantino-Sicula V: l'arte della politica in Sicilia nel XII secolo tra Bisanzio e l'Islam, Atti del Convegno Internazionale, Palermo, 19–20 aprile*, ed. M. Re and C. Rognoni, ISSBN, Quaderni 17 (Palermo, 2009), 284–308; and V. Prigent, "L'archonte Georges, prôtos ou émir ?" *Revue d'études byzantines* 59 (2001), 193–207.

54 From this perspective the policies of the two Williams contrast: William I (1154–1166) favoured the Latins who concentrated numerous powers in their hands and provoked the ire of the nobility and that of the eunuchs. William II somehow placed Latins alongside members of the "eunuchs' party" (which included a few Latins); they formed a council, made up of numbers which varied over time.

55 See Nef, *Conquérir*, 606–608, amongst others.

56 In addition to the example of Matthew of Aiello, one might cite the case of Malconvenant, whose Arabised signature has been highlighted: N. Jamil and J. Johns, "Signs of the Times:

preserve, and even to reinforce, the Islamic dimension of the central administration required precise competences, notably linguistic competences, from a section of its highest officials, which goes some way to explaining these characteristics.

Once again, without being able to distinguish the priorities as they were in eleventh- and twelfth-century minds, it does seem clear that the central institutions, whose operation required the participation of a not insubstantial number of individuals, were significant places and tools of aggregation. Thus tensions were a recurring feature. Little by little, several circles began to emerge within which the different profiles were divided. This very division would evolve over time, to the rhythm of the tensions that visited the court. The development of the Sicilian State supposes a movement of models and practices, and also of men capable of implementing them within Islamic and Byzantine spaces and that of the Latin West.

One characteristic explains both this ability to aggregate and the struggles that were fought to gain the different posts and the greatest possible proximity to the sovereign: the fact that this system favoured social mobility (a model theorised for Byzantium more than for Islam[57]). Service to the sovereign enabled *homines novi*, and also slaves, to exert important power, to gain access to sizeable riches and to develop client networks, always useful for imposing oneself.[58] This characteristic, in combination with other elements (ideological symbiosis with royal choices, etc.) explains *de facto* how a certain number of Latins felt no hesitation in defending the Sicilian State that the Hautevilles promoted. It equally explains its rejection by a section of the nobility present in Sicily, excluded by the system, since they could only gain positions of power through integration within an aristocracy that was not defined in terms of nobility.

Thus this distinctive feature fuelled tensions and was in fact regularly denounced by the descendants of the comrades-in-arms of the first Hauteville.[59] They did so both in the name of an imaginary egalitarianism that would characterise all *milites* who had fought the Muslims, or their descendants, and probably too in the name of their minority position, which turned

Arabic Signatures as a Measure of Acculturation in Norman Sicily," *Muqarnas* 21 (2004), 180–192.

57 A.P. Kazhdan and M. McCormick, "The Social World of the Byzantine court," in *Byzantine Court Culture from 829 to 1204*, ed. H. Maguire (Washington: Dumbarton Oaks, 1997), 167–197.

58 See Nef, *Conquérir*, 616–619.

59 See Nef, *Conquérir*, 598–625.

them into potential combatants of these same Muslim enemies.[60] Another source of tension was the Hautevilles' clear refusal to establish counties in Sicily, and thus to distinguish a nobility: certain families enjoyed important grants and strong positions, but the word "count," used generically, only appears in Arabic (in the plural form *qamāmisa*)! The most frequently, although sparingly, used term in the Latin texts is *barones*. Furthermore, it seems that the role that the eunuchs played and the position of Muslims in the royal troops were not accepted without some difficulty. Tensions regularly led to challenges, conspiracies and *ad hominem* attacks, but also to serious armed confrontations.[61]

4 Conclusion

The Sicilian reality of the eleventh and twelfth centuries, as reflected in documentation, presents itself as both diverse and contradictory; one must therefore restore the hierarchy of the elements that form it. The Hauteville dynasty built a quite original State that combined diverse referential systems, but whose heart, a fiscal one, was of Islamic inspiration. Its aims were varied, combining a concern to ensure its prestige among the contemporary political entities, the Sicilian and the southern elites, with the necessity of thereby ensuring the seats of power and that of controlling the aristocracy. During these two centuries Sicily consequently cannot be described as "feudal."

Groups of beneficiaries of this system rubbed shoulders within the field of power, but with distinct and even sometimes antagonistic practices, representations and motivations. Thus what was at stake was less a matter of passing from one system/ideal-type to another, which in fact did not take place, than the co-existence of different systems of representations and practices, of different *habitus*, fuelled by an important circulation of referential systems and individuals at court. It is equally probable that, outside that field (or rather, outside the evidence), the *habitus* of peasants who formed relatively autonomous communities would have clashed with that of the grantees familiar with seigniorial practices.

60 See Nef, *Conquérir*, 438–440, on the model of what has been described for Catalonia by P. Bonnassie, "Sur la genèse de la féodalité catalane: nouvelles approaches," *Il feudalesimo nell'alto medioevo*, XLVII Settimana di Studi sull'alto medioevo (Spoleto: Fondazione Centro Italiano di Studi sull'Alto Medioevo, 2000), I, 569–606, esp. 579.

61 Nef, *Conquérir*, 598–616.

It is nevertheless clear that with successive generations came the progressive evolution of these *habitus*, and that they were not the ones responsible for the ending of the Hautevilles' Sicily. Despite difficulties, including the aristocratic revolt of 1161, little by little the dynasty overcame its opposition. What was decisive in the final crisis was rather the prospect that the State as it had been in Sicily since the conquest might disappear, in the light of the Hauteville dynasty's succession difficulties and the war thereby triggered.

Contrary to what the Pseudo-Falcand's dramatic description of the events might lead us to think, these latter were not the inevitable outcome of the above developments, including revolts. All these took place within the political field. It was not the Muslim taxpayers who took a stand against abuses, but rather the Latin grantees who claimed a more active role for themselves, without ever going so far as to suggest another candidate for kingship. Two phenomena combined to hasten the end of this experiment: Henry VI's claim to Sicily following William II's death without heir, and the Arabo-muslims' inability to support the Sicilian candidate, Tancred, who had been involved in the 1161 massacres at Piazza and Butera.[62] Somehow, if the revolts of the 1160s still suggest an agreement on the rules of disagreement,[63] the final divisions do not.

62 S. Tramontana, "La monarchia normanna e sveva," in *Storia d'Italia*, ed. G. Galasso (Turin: UTET, 1983), III, 435–810, then separately (Turin: UTET, 1986), 89–191.

63 Indeed, as Bourdieu recalls, "On peut dire que l'Etat est le principe d'organisation du consentement comme adhésion à l'ordre social, à des principes fondamentaux de l'ordre social, qui est le fondement non pas nécessairement d'un consensus mais de l'existence même des échanges conduisant à un dissensus"; P. Bourdieu, *Sur l'Etat. Cours au Collège de France 1989–1992* (Paris, 2012), 15.

CHAPTER 12

Resources and Power

Conclusion

Eduardo Manzano

One way of tackling the problem of institutions is to stress their role as managers of material or immaterial resources. The concept of "resources" should be understood here in very wide terms, as it refers not only to the incomes at the disposal of a given community, but also to the procedures, rulings and practices that regulate the social interactions that determine their production, distribution and consumption. D. North has epitomised this view by stating that institutions "are the humanly devised constraints that shape human interaction," given that "they structure incentives in human exchange, whether political, social, or economic."[1] Therefore, a custom, a norm, a law or, more generally, an administrative system, can be considered as a valuable resource for the institutional management of material or immaterial assets.

This view of "institutions as rules" has been complemented by the approaches of the "New Institutional Economics" which stress the role of "institutions as equilibria." This perspective focuses "on how interactions among purposeful agents create the structure that gives each of them the motivation to act in a manner perpetuating this structure."[2] In this connection, A. Greif has referred to "coercion-constrained institutions," which are those affecting the relationships between the rulers and the ruled in such complex ways that they are liable to "make violence economically productive." These institutions trade security and redistribution of assets for a reduction of the capacity of coercive power by dominant classes, the result being a "balance of coercive powers within a polity."[3] This favours, for instance, the existence of tax systems, whose prevalence or absence (and the countless in-between

1 D. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), 3.

2 A. Greif and C. Kingston, "Institutions: Rules or Equilibria," in *Political Economy of Institutions, Democracy and Voting*, ed. N. Schofield and G. Caballero (Berlin: Springer, 2011), 13–15.

3 A. Greif, "Commitment, Coercion and Markets: The Nature and Dynamics of Institutions Supporting Exchange" in *Handbook of New Institutional Economics* ed. C. Ménard and M. Shirley (New York: Springer, 2005), 747–748. Greif also refers to "contract enforcement institutions," which regulate relations between private parties and whose relation with "coercion constrained institutions." On New Institutional Economics, see further, above, pp. 6–7, 31–34, 50.

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situations) reveal critical issues concerning how coercion was exercised by states, its action costs and the results it produced.

Following this line of thought, economic anthropologists, who defend the behavioral theories of collective action, have stressed that "the form taken by a state depends in large part on the outcome of bargains struck between those in positions of state authority (…) and non ruling groups, especially taxpayers." This allows for a sharp distinction between states whose revenues are derived from a broad tax-paying base, and those which depend on ruler-owned estates, control of long distance-trade, or the outcomes of imperial practice (e.g. tributes or warfare). In the case of the latter, "the imperative to develop a collective form of the state will be weaker."[4] A comprehensive reading of this dichotomy between states whose revenues are drawn "from most of the polity's population," and states with revenues "drawn from a much narrower subset of the population (…) or from foreign sources directly controlled by the ruler or other principals,"[5] reveals that what these authors have in mind is a historical interpretation of the evolution of most western polities in the case of the former, and of "eastern" or "Asiatic" states in the case of the latter.

Despite their historical base, these notions have failed in general to attract the attention of historians, who tend to regard them with some degree of scepticism. Leaving aside the increasing distrust of recent historiography regarding theoretical approaches – a trend which epitomizes the growing conservatism of the discipline – three main criticisms are likely to emerge from general or specific analysis based on historical evidence: first is the charge of teleology, as the above-mentioned views tend to portray history as an inevitable path leading to the successful consolidation of western modern states; the second is the surmise of legal and institutional developments in western and, particularly, eastern polities with an empirical base which is usually quite narrow, or even non-existent; the third is the excessive abstraction of these interpretations, which pretend to describe institutional models, although they do not always take into account the complex variables of social and economic dynamics.

A careful reading of the preceding chapters shows that whereas some of these criticisms may be correct, medievalists would be ill-advised if they chose to ignore the significant contributions that have recognized in institutional processes a major factor in the explanation of social and political change. As a matter of fact, historical interpretations would gain consistency and meaningfulness if they were to be confronted with the intriguing institutional issues

4 R.E. Blanton and L.F. Fargher, "Collective Action in the Evolution of Pre-Modern States," *Social Evolution & History* 8 (2009), 134, 138.

5 Ibid, 139–140.

emerging from the comparison of how and by whom surpluses were collected, allocated and expended in different junctures or periods.

Take, for instance, the case of states, which I will consider as synonymous with political structures and institutions, following Carocci and Collavini (see above). Their contribution clearly shows that medieval states were not naturally inclined to extract resources thoroughly, but were driven by a variety of factors that may, or may not, have fostered or allowed centralised fiscal institutions. Not all states were, or pretended to be, the Leviathan and many of them had forms of funding their expenses in ways much more efficient, simple or feasible than taxing their subjects extensively. The decline of expenditures in the early Middle Ages as a result of the radical transformations of the western armies, or the evidence showing that such a centralised state as the Byzantine empire did not tax regularly or extensively, but rather through "occasional operations affecting areas of various sizes" (see Prigent, above) are useful warnings against the temptation of drawing straight lines of institutional development.

Also administrative and political frameworks radically influenced institutional shaping, depending on whether cities, villages or private estates were the main centres of tax-levying. It is also revealing to learn that the Byzantine empire tried to "seek out the closest possible contact with the tax payer" on the one hand, while promoting "a long circuit for the tax product" on the other, in order to keep the beneficiaries of state expenditures as far as possible from sources of revenues: such choices were not dictated by economic logic, but by political and strategical reasons. Again, in this case, the quest for balances or equilibria was imposed by different and not always compatible logics. This explains why in the medieval west, although land also had "social and political meanings" beyond its economic significance, its transfer to political elites – along with other resources such as offices and immunities – was the main political device at the disposal of kings seeking to obtain support for their authority. Transfer of resources was a feature of political legitimacy and beneficiaries themselves came to be identified with resources. Interestingly, this identification did not stop with fiefs and similar concessions, but also affected fiscal revenues, as shown by Carocci and Collavini when they discuss tax farming, tax collection or tax exemption in the late Middle Ages.

It can be argued that what we are seeing here are tales of "political equilibrium," which shape institutions. But a more nuanced perspective would insist on the idea that the critical issue remains the understanding of "social dominion" forming and performing institutional practices. In this connection it is essential always to bear in mind that the actors of this "social dominion" were not only members of the "dominant classes," but also communities. The fact

that it is more difficult to identify medieval communities – except in prominent cases like the Italian communes – than dominant groups does not mean that they played no role in the institutional management and allocation of resources. Again the situations seem to have been very variable depending on the character of these communities, their relative strength, their forms of articulation, and the political factors that intervened at particular junctures. Nevertheless, their importance in processes of institutional configuration is unquestionable.

From this point of view, the case of the *ḥisba* in medieval Islam is certainly paradigmatic, as it shows how religious sanction of community's values contributed decisively to shape an institution with a strong presence at different periods (see Narotzky and Manzano, above). Another example is the treatment of lands conquered by the Muslim expansion of the seventh century, which were widely considered as a communal resource at an early period, but became appropriated by members of the Muslim elite through a crafty elaboration, which incorporated existing legal elements, quite different from those dominant in the early Islamic tradition (see Kennedy, above). The same institutional tension is visible in the situations created in Sicily when the Normans conquered the island, whose population was deeply arabized and Islamized (see Nef, above).

Although quite disparate, all these cases show discrete blocks of institutional masonry. At this stage, we can document them thoroughly in particular cases and begin to group them under common questions. Comparative analysis will produce important results in the near future, but in the meantime we can discern certain traits that shape processes of institutionalization: the economic means and circuits, the weight of communities, the role of dominant classes, the legal traditions, the nature and legitimacy of power and, last but not least, the symbolic values. These symbolic values in turn explain exchanges with no evident economic rationale, contribute to shaping communities and dominant classes, become enshrined in legal traditions and, last but not least, serve to legitimate power. In a nutshell, these symbolic values are the final element that allows for the distinctive configuration of those unmistakably human entities that we call institutions.

Palaces and Places

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The preceding sections have considered issues of institutions and institutionalisation largely through texts and people (Law) and through things and people (Resources). The present section looks again at these aspects, but adds a greater emphasis on space and place. The papers ask how space and place can be used to provide identity and authority beyond the personal. For example, in what different ways, in different places and at different times, could palaces act as impersonal representations of absent rulers? How might routine and memory come to be associated with a specific place or space? What kind of institution was a palace or a monastery? To what extent may they be considered "total institutions," closed institutional spaces? How did their nature change over time?

Further methodological and historiographical questions are raised. Kaplan considers how far fixing in space is a core feature of institutionalisation, and also the effect of institutionalisation on the marking of territory. MacLean asks whether or to what extent "itinerant kingship" is an institution imposed by historians. He and Airlie explore the degree to which the institutionalisation of palaces and other places associated with rulers relate to broader political development and how interpretation is linked to historical periodisation. MacLean suggests that examination of the functioning and perception of the palace may allow for an integration of the history of institutions and structures with the history of political activity and development more fertile than a focus on the issue of the survival of the "state" or of certain political institutions. The aspect of palaces as places of struggle, and of authority and coercion is also very clear in the Islamic and Byzantine world, as shown by Cheikh, whilst monasteries were similarly affected by struggles, as shown by Kaplan. Partly driven by such struggles, different types of norm developed, governing and identifying behaviour within monasteries and palaces, and in some instances suggesting the type of specialisation often associated with institutionalisation.

The papers introduce further types of source, most significantly archaeology and architecture. And once again the section introduces further methods of analysis, with some individual papers that are explicit comparisons between Western Christendom and Islam or Byzantium and Islam (MacLean and Cheikh respectively), that raise issues of diversity within a particular area (Kaplan on Byzantium), or that consider possibilities of influence from one area to another (esp. Cheikh).

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CHAPTER 13

The Palace Complex

Stuart Airlie

1 Approaches

Palace of varieties, people's palace, palatial accommodation, Caesar's Palace of Las Vegas, Palace of Westminster: palace is a familiar term. It is in some ways less familiar among historians who tend, when examining centres of monarchical power, to use the term court. This is the preferred term in work on many periods: ancient, medieval and early modern. One reason for this is the immense shadow cast by the work of Norbert Elias which has provoked counter-attacks on its status as a master-key to political culture of the (early) modern era. Elias' work is much more than an examination of the minutiae of courtiers' behaviour at Versailles; as well as analysing the rise of royal power over aristocratic power it charts such developments as the court's role in the cultural shift from "social constraint towards self constraint."[1]

Scholars have challenged Elias on a number of fronts, pointing to Vienna to show that not all courts were like Versailles and arguing that the social and cultural characteristics of Elias' royal court were not new developments.[2] But the critique of Elias' work by scholars such as Duindam has not lessened the importance of the court as concept or as institution. On the contrary. Duindam opens his 1995 study by proclaiming the court to be "the most successful elite institution of the past." He gives the court a deep background: "The early modern court was the apotheosis of an old tradition." It thus cannot function as a way of explaining modern culture but this means that the royal court becomes even more historically important, not less. Its centrality is apparent but can only be fully understood by "intercultural comparison and study of preceding

1 J. Duindam, *Myths of Power. Norbert Elias and the Early Modern European Court* (Amsterdam: University Press, 1995), 9. Ancient courts: *The Court and Court Society in Ancient Societies*, ed. A.J.S. Spaworth (Cambridge: Cambridge University Press, 2007); medieval: *Court Culture in the Early Middle Ages*, ed. C. Cubitt (Turnhout: Brepols, 2003); and M. Vale, *The Princely Court* (Oxford: Oxford University Press, 2001).

2 J. Duindam, *Vienna and Versailles. The Courts of Europe's Dynastic Rivals, 1550–1780* (Cambridge: Cambridge University Press, 2003).

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history."[3] This challenge has been taken up, as in, for example, A.J. Spaworth's collection of studies on courts in ancient societies (including China) which duly grapples with Elias as well as with some of the more unpleasant overtones of the term "court" (court as site of reactionary, snobbish values, etc.), something that was a problem for some nineteenth-century scholars, and which may also have contributed to some scholarly suspicion of court studies (clothing, feasts) as trivial anecdotal antiquarianism.[4]

Such suspicions have, however, melted away and court studies are now a thriving area of the study of the culture of power and authority. There seems to be no current single authoritative model but this only spurs activity. And scholars tend to prefer the term "court" to "palace." As Spaworth says, court scholars have to cross disciplinary boundaries and "the study of palaces, gardens, costume and iconography is traditionally the field of art historians and archaeologists."[5] Several comments suggest themselves but, for now, it is worth noting that in such a perspective palaces appear as a sub-study within court studies. This is fair enough up to a point, but such a perspective may make it hard to see what is distinctive about palaces, and concentration on courtiers/court favourites blurs the distinctiveness of early medieval western courts and palaces where such figures were not so prominent, because the system of patronage and office-holding could not sustain them.[6] Even the ESF Palatium project seems to stem from court concerns in its references to the palace as "a place for cultural exchange" and in its focus on "ceremonial" as the rules for "human interaction" within the place of the palace, though these terms should be understood broadly and the project does include architecture.[7] The separation of terms such as "court" and "palace" is artificial, but real.

This paper, however, looks, not so much at courts as at palaces as specific sites in specific historical contexts and landscapes. The fact that they were concrete sites of power and authority is what makes them valuable objects of study; the palace as site and building is a specific part of the institutionality of power and authority. The study of palaces is itself various. And palaces are not just occupied by historians. Archaeological evidence is of fundamental

3 Duindam, *Myths of Power*, 1, 192.

4 A.J. Spaworth, "Introduction," in *Court and Court Society*, ed. Spaworth, 1–16, at 1–2, 5–6; A. Winterling, "Introduction," in *Zwischen Haus und Staat. Antike Höfe im Vergleich*, ed. A. Winterling, *Historische Zeitschrift* Beiheft 23 (1997), 5–6.

5 Spaworth, "Introduction," 2.

6 C. Wickham, "Topographies of Power: Introduction," in *Topographies of Power in the Early Middle Ages*, ed. M. de Jong and F. Theuws (Leiden: Brill, 2001), 1–8, at 3.

7 See www.courtresidences.eu/index.php/presentation/aims_and_objectives.

importance for the understanding of palaces but such evidence is not always available; palaces as renowned as Aachen and Constantinople remain for us as sketches from texts. Further, archaeologists are not always united in their views of what might make palaces important, often focusing on elite landscapes, or on longer periods of time than historians might traditionally study, or surprising historians by starting from very different questions and concepts, though this is a challenge rather than a problem. Archaeological discoveries can upset historians' working assumptions, as at Magdeburg where we have now lost the palace of Otto I.[8]

This variety is both valuable and necessary: how else can we look at them? Several collective volumes look at palaces and, being the work of experts from various fields, bring together palaces from various cultures and so provide comparative studies over time of sites from the Christian West as well as from the Byzantine and Islamic worlds.[9] Much comparative work does indeed focus on ceremonial.[10] Ceremonial, however, was only one feature of palace life and may have attracted rather too much scholarly attention, partly because of the undoubted fact that important contemporary texts make much of it. But palaces offer more material than that. Of course, it is difficult to separate palaces from courts; that is precisely part of the value of palaces as an object of study. Definitions of palaces and/or courts from the ancient world, Byzantium, the

8 See Wickham, "Topographies," 8 n. 10, for some differences between (some) historians and (some) archaeologists, and see the various approaches adopted in that volume; for consideration of material and written evidence from two very different parts of Europe, see R.D. Oram, "Royal and Lordly Residence in Scotland *c.* 1050 to *c.* 1250," *Antiquaries Journal* 88 (2008), 165–189 and T. Martin, "Chronicling the Iberian Palace: Written Sources and the Meanings of Medieval Christian Rulers" Residences," *Journal of Medieval Iberian Studies* 2 (2010), 109–139. On sites of rule and assembly in landscapes see the Landscapes of Governance project at http://www.ucl.ac.uk/archaeology/research/projects/assembly and The Assembly Project at http://www.khm.uio.no/english/research/projects/assembly-project/. On gaps in palace excavations and surprises springing from them, C. Ehlers, "Pfalzenforschung heute," in *Orte der Herrschaft. Mittelalterliche Königspfalzen*, ed. C. Ehlers (Göttingen: Vandenhoeck & Ruprecht, 2002), 25–53, at 44; and www.domgrabungen-md.de.

9 See, e.g., *Sedes regiae* (*ann. 400–800*), ed. G. Ripoll and J.M. Gurt (Barcelona: Reial Acadèmia de Bones Lletres, 2000); I have not yet seen *Visualisierung und Herrschaft. Frühmittelalterliche Residenzen – Gestalt und Zeremoniell*, ed. F.A. Bauer (Istanbul: Ege Yayinlari, 2006). See also the report of the 2005 Istanbul meeting of the Tributary Empires Compared project, at: http://tec.saxo.ku.dk.

10 See, e.g. *Kalifat und Königtum. Herrschaftsrepräsentation der Fatimiden, Ottonen und frühen Salier an religiösen Hochfesten*, ed. J.R. Oesterle (Darmstadt: Wissenschaftliche Buchgesellschaft, 2009).

Carolingian world and the Islamic world all include people as well as sites.[11] Rulers, however, could wield power without having what we might recognise as a palace. Walter Pohl's study of "barbarian places of power" in the steppes highlights the "social interaction at court" in the sites he studies, but he also flags up contrasts with sites familiar to the early medievalist (e.g., absence of religious sites, no representations of the past, absence of active role for women in assemblies, banquets etc.). The same volume, however, contains an article on Gudme which does see the hall there as a "place in which the functions of "theatre, court and church" were united."[12]

We can say that, in the cultures that concern us, if palaces had not existed, rulers would surely have invented them. Rulers were acclaimed as builders.[13] Palaces were one site of power and J. Barbier's definition of palaces in the Frankish kingdom as sites that were exclusively royal, i.e., reserved for royal use, and that operated at a regnal level (as places for receiving ambassadors, holding assemblies, issuing documents, laws etc.) is a useful one, to which we could add all sorts of other elements, including permanence, scale of buildings, special nature of the site in the landscape, etc.[14] All this can be summed

11 Spaworth, "Introduction," 2–3; S. Airlie, "The Palace of Memory. The Carolingian Court as Political Centre," in *Courts and Regions in Medieval Europe*, ed. S. Rees Jones, R. Marks and A.J. Minnis (Woodbridge: Boydell, 2000), 1–20, at 3; J.M. Featherstone, "Emperor and Court," in *Oxford Handbook of Byzantine Studies*, ed. E. Jeffreys, J. Haldon and R. Cormack (Oxford: Oxford University Press, 2008), 505–517, at 505; also Nadia Cheikh's paper in this volume, below.

12 W. Pohl, "The *regia* and the *hring* – Barbarian Places of Power," in *Topographies of Power*, ed. de Jong and Theuws, 439–466, at 455–459; L. Hedeager, "*Asgard* Reconstructed? Gudme – A "Central Place" in the North," ibid., 467–507, at 479, and 500–503; cf. the highly charged landscape around Yeavering in Northumbria, R. Fleming, *Britain after Rome* (London: Allen Lane, 2010), 101–102.

13 See, e.g., Einhard, *Vita Karoli Magni*, *cc*. 17, 26, ed. O. Holder-Egger, MGH SRG (Hannover and Leipzig: Hahnsche, 1911), 20, 30–31; and for a contemporary view of the relationships of Justinians's churches, palaces and city as complex and evolving Procopius, *Buildings*, I.iv, 1–8, trans. H.B. Dewing, Loeb series vol. 7 (Cambridge, MA: Harvard University Press, 1971), 42–49. In general, M. Untermann, "Die architektonische Inszenierung von "Orten der Herrschaft" im Mittelalter," in *Places of Power – Orte der Herrschaft – Lieux du Pouvoir* (*Deutsche Königspfalzen* 8), ed. C. Ehlers (Göttingen: Vandenhoeck & Ruprecht, 2007), 17–33.

14 J. Barbier, "Les lieux du pouvoir en Gaule Franque," in *Places of Power*, ed. Ehlers, 227–246, at 228; T. Zotz, "Grundlagen und Probleme der Staatlichkeit im frühen Mittelalter. Zur Bedeutung und Funktion der Königspfalzen," in *Der frühmittelalterliche Staat – Europäische Perspektiven*, ed. W. Pohl and V. Wieser (Vienna: Austrian Academy of Sciences, 2009), 515–520, at 515–516.

up as "le signe visuel, la forme matérielle, l'inscription spatial d'un pouvoir," in the words of Marie-France Auzépy and Joël Cornette.[15] This paper will examine, with very few exceptions, only rulers' palaces; so, no coverage of aristocratic residences, bishops' palaces, etc.[16] Terminology is of course important, but we need not be confined by it. The West inherited the Roman term *palatium* and also deployed the term "sacred palace," but we do find other terms used; the Merovingian usage of the term *palatium* is less systematic than Carolingian usage, which was itself various with west Frankish documents using *palatium* while east Frankish evidence refers to palace as well as to *curtis*, etc.; the Ottonian era witnessed other changes.[17] Terminology can complicate our picture in helpful ways: D. Warner's translation of Thietmar of Merseburg refers to Grone as a palace, which is an appropriate translation of Thietmar's term *urbs*, although we shall return to Thietmar's perspective later.[18] The term *palatium* did, however, have extra value for much of the early medieval West in that it referred to specific places but also referred to the abstract notion of the ruler's power, to government, etc. Thus, when Charlemagne decreed that coins were to be minted only in the palace, he was not referring only to Aachen, but to the network of palaces and thus, by synecdoche, to an apparatus of rule. Liudprand of Cremona knew that to be born in the purple/palace was a

15 M.-F. Auzépy and J. Cornette, "Introduction. Lieux de pouvoir, pouvoir des lieux," in *Palais et Pouvoir. De Constantinople à Versailles*, ed. M.-F. Auzépy and J. Cornette (Saint-Denis: Presses Universitaires de Vincennes, 2003), 5–31, at 5.

16 See, for the variety of palaces, and of studies, e.g., M. Miller, *The Bishop's Palace. Architecture and Authority in Medieval Italy* (Ithaca and London: Cornell University Press, 2000); *The Seigneurial Residence in Western Europe 800–1600*, ed. G. Meirion-Jones, E. Impey, and M. Jones (Oxford: Archaeopress, 2002); A. Renoux, "Palais et monastères: La question des Klosterpfalzen en France du Nord (IXe–XIe siècle)," in *Pfalz-Kloster-Klosterpfalz St. Johann in Müstair*, ed. H.-R. Sennhauser (Zurich: Hochschuverlag AG, 2011), 81–97.

17 Barbier, "Les lieux du pouvoir," 228; T. Zotz, "Palatium et Curtis. Aspects de la terminologie palatiale au Moyen Age," in *Palais royaux et princiers au Moyen Age*, ed. A. Renoux (Le Mans: Publications de l'Université, 1996), 7–15; T. Zotz, "Symbole der Königsmacht und Spiegel der gesellschaftlicher Interaktion. Zur Rede vom *Palatium* in den Urkunden der Ottonen," in *Retour aux Sources. Textes, etudes et documents d'histoire medieval offerts à Michel Parisse*, ed. S. Gouguenheim, M. Goullet and O. Kammerer (Paris: Picard, 2004), 363–372, at 365–366. On evolving tensions between *palatium* and *castrum*, A. Renoux, "*Palatium* et *castrum* en France du Nord (fin IXe–debut XIIIe siècle)," in *Seigneurial Residences*, ed. Meirion-Jones et al., 15–25.

18 Thietmar, *Chronicon*, VI, *c.* 66, ed. R. Holtzmann, MGH SRG New Series 9 (Berlin: Weidmann, 1935), 356; *Ottonian Germany. The Chronicon of Thietmar of Merseburg*, trans. D. Warner (Manchester: Manchester University Press, 2001), 282.

metaphor but was also, in Constantinople, an actual reference to an actual palace room; in the West, Ottonian writers also deployed such phrases in both these senses, as in the claim that Otto I's younger brother Henry had a superior claim to rule because he was "born in the palace (*aula regali*)," i.e., after their father had become king; the description of the sisters of the late Otto III as "an ornament of the palace (*decus imperatoriae aulae*)" not only refers to their exalted status but also to their actual presence in Bamberg in 1012.[19]

To study palaces is thus to study a form of rule. There is a rich field of palace studies but the most distinctive and prominent is that embodied in the *Deutsche Königspfalzen* volumes and attendant studies. Tim Reuter recognised its prominence while lamenting some of its limitations. In discussing the role of special sites that represented the ruler even in his absence, he noted that palaces, episcopal and monastic churches all "made up a representative landscape" and that the great palaces were "more than the mere pieces of logistic support for the royal *iter* to which *Pfalzen-* and *Itinerarforschung* has tended to reduce them." He also saw that historiography on the Ottonian period has tended to "develop along parallel lines of enquiry … that never meet … *Pfalzenforschung* has proceeded largely without reference to … [e.g.] Althoff's concern for group consciousness," etc.[20] This is rather unfair; Thomas Zotz has related *Pfalzenforschung* to broader historiographical concerns with, e.g., *Staatlichkeit*.[21] To say this, however, is to acknowledge that the distinctive nature of German historiographical concerns and the fact that the massed volumes of *Pfalzenforschung* focus on a particular type of kingdom in which the *iter* and resulting polycentricity are historiographically dominant, must not be

19 Liudprand, *Antapodosis*, I, *cc.* 6 and 7, *Patrologia Latina* 136, col. 793, translated by P. Squatriti, *The Complete Works of Liudprand of Cremona* (Washington: Catholic University of America Press, 2007), 48; I have been unable to consult the edition by P. Chiesa. Henry: *Vita Mathildis reginae posterior*, *c.* 9, ed. B. Schütte, *Die Lebenschreibungen der Königin Mathilde*, MGH SRG 66 (Hannover, 1994), 161; K.J. Leyser, *Communications and Power in Medieval Europe. The Carolingian and Ottonian Centuries* (London: Hambledon, 1994), 88; T. Zotz, "Wie der Typ des Alleinherrschers (*monarchus*) durchgesetzt wurde," in *Die Macht des Königs. Herrschaft in Europa vom Frühmittelalter bis in die Neuzeit,* ed. B. Jussen (Munich: C.H. Beck, 2005), 90–105, at 95. Sisters: *Annales Quedlinburgenses*, *s.a.* 1012, *Die Annales Quedlinburgenses*, ed. M. Giese, MGH SRG 72 (Hannover, 2004), 533; T. Zotz, "Die Gegenwart des Königs," in *Otto III. – Heinrich II. Eine Wende?* ed. B. Schneidmüller and S. Weinfurter (Sigmaringen, 1997), 349–386, at 367.

20 T. Reuter, *Medieval Polities and Modern Mentalities* (Cambridge: Cambridge University Press, 2006), 130, 141.

21 Zotz, "Grundlagen"; Zotz, "Symbole"; in general see the valuable collection, *Orte der Herrschaft*, ed. C. Ehlers. But cf. Simon MacLean in this volume below.

allowed to colour our views of all palace systems. Different palaces belonged to different systems. Constantinople's palace complex does not fit the mould of *Pfalzenforschung*, though work from that tradition might well be helpful in helping us to look at it from new angles.

This paper considers palace sites as a distinctive institutional space, under two broad headings. First, did palaces form a "total institution," were they closed and specialised institutional spaces? Second, can they be seen as impersonal, which I use here to mean how did they act as monuments in a landscape even when the ruler was not present? While ranging from late antiquity to *c.* 1000, this paper's assumed norm is all too often the palace of the Carolingian and Ottonian realms, but comments are at times deliberately general to provoke further discussion and potential comparison. Differences between West and East are important.[22] In Byzantium when Michael II gained power and Michael III lost it, it was the palace that was the key battleground and prize. In the tenth-century west, rulers could capture and damage palaces but that did not mean that they had won control of the opposing ruler. This may point to differing levels of intensity of state power in East and West.[23]

2 Palaces as "Total Institutions"? Experiencing the Palace

In a recent article Wojtek Jezierski has considered whether the monastery of St. Gall *c.* 1000 could profitably be considered as a "total institution" in Erving Goffman's sense. Such an institution is, in Jezierski's summary of Goffman, a "place strictly separated from the outside world, where all activities of the inmates are subject to one, all-embracing authority; the inmates are treated not as individuals but as a group." Goffman's concept is deliberately extreme and originally applied to mental hospitals rather than to, say, university halls of residence. Jezierski uses Goffman's concept, together with some work by Foucault on surveillance and self-policing, as basis for a reading of Ekkehard

22 For a very different approach, arguing for the "influence" of "common ancestry" of ideas and practices, A. Stoclet, "From Baghdād to *Beowulf*: Eulogising "Imperial" Capitals East and West in the Mid-Eighth Century," *Proceedings of the Royal Irish Academy* 105C (2005), 151–195, at 152, 172.

23 On the significant role of the *papias* in the fate of Michael II and Michael III, see A. Kazhdan, "Papias," in *The Oxford Dictionary of Byzantium*, ed. A. Kazhdan et al. (New York and Oxford: Oxford University Press, 1991), III, 1580; on tenth-century western rulers and palaces, see below on Aachen in 978 and for a distinctively weak Ottonian state, Reuter, *Medieval Polities*, 133–134.

IV's St. Gall stories. He concludes that while "a relationship of power and control was what constituted a Benedictine monk and was not an addition to his existence" and surveillance and policing were important, St. Gall monks did not live in an institution of absolute openness.[24] If a monastery such as St. Gall was not a total institution, it is not likely that we can characterise palaces as such.

To begin with, palaces were surely different from monasteries in their scale and complexity. The palace at Constantinople, in the era of *De Cerimoniis*, may have had a "staff" of *c.* 1000–2000 or more people, while the basilica of Late Roman Trier could have comfortably accommodated 1600.[25] These figures are not matched by palaces of the early medieval West: Carolingian royal halls could comfortably accommodate only between *c.* 300 and *c.* 750 people, though assemblies could use the open air. This seems closer to the "grandstand" in Yeavering (*villa regia*) in early medieval Northumbria than to Constantinople.[26] But court sources from late ninth-century Constantinople suggest that feasts were attended by some 200 people.[27] Such palace figures are actually not too far from those of the new large-scale monasteries in the Carolingian world of the late eighth century such as Lorsch and Fulda, with the latter coming to contain some 600 monks by the 820s, though they did not all live in the same place.[28] One recalls James Campbell's remark that early Anglo-Saxon England did indeed have towns: they were called monasteries. And an Arab traveller of the tenth century described the monastery of Fulda as a "town."[29]

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24 W. Jezierski, "Monasterium Panopticum: on Surveillance in a Medieval Cloister – The Case of St. Gall," *Frühmittelalterliche Studien* 40 (2006), 167–182, at 168 and 179; E. Goffman, *Asylums. Essays on the Social Situation of Mental Patients and Other Inmates* (Harmondsworth: Penguin, 1968); see also T. Burns, *Erving Goffman* (London: Routledge, 1992), 141ff.

25 Featherstone, "Emperor and Court," 506; M. McCormick, "From One Center of Power to Another: Comparing Byzantine and Carolingian Ambassadors," in *Places of Power*, ed. Ehlers, 45–72, at 50–52.

26 McCormick, "From One Center," 50–51; C. Warr, "The Social Use of Space at *Gefrin*," in *Yeavering. People, Power and Place*, ed. P. Frodsham and C. O'Brien (Stroud: Tempus, 2005); and P.S. Barnwell, "Anglian Yeavering: a Continental Perspective," ibid., 174–184.

27 R. Morris, "Beyond the De Ceremoniis," in *Court Culture*, ed. Cubitt, 235–254, at 237.

28 J. Raaijmakers, *Sacred Time, Sacred Space. History and Identity at the monastery of Fulda* (PhD thesis, University of Amsterdam, 2003), 3–4; cf. M. Innes, *State and Society in the Early Middle Ages. The Middle Rhine Valley 400–1000* (Cambridge: Cambridge University Press, 2000), 18–34.

29 J. Campbell, *Essays in Anglo-Saxon History* (London: Hambledon Press, 1986), 82, but see now Fleming, *Britain After Rome*, 183–212. Fulda: A. Miquel, "L'Europe occidentale dans la

Palaces, however, were grander, more complex in function and in diversity of population, not least in including women. The monastery of Fulda, for example, had problems in accommodating women, which constrained its acting as a Carolingian palace.[30] Palaces were predicated on relating to the wider world, and indeed controlling it. One of the hallmarks of Goffman's "total institution" is its separation from the outside world. Monasteries in the West were not always as remotely located as they were represented as being, as in the cases of e.g., Fulda and Northumbrian monasteries.[31] A separation from the world is, however, a key part of the representation of monasteries and the visits of rulers to monasteries would repay consideration here.[32] It may seem absurd to think about palaces in terms of separation. One might think of the link of the imperial palace in Constantinople to the Hippodrome; emperors were thus able to go directly from the palace to a great urban gathering (the Hippodrome could hold 80,000 people), and their appearance there was important. In the West, palaces could be located in towns or whole towns could be characterised as royal centres: Aachen looks very like a town under Charlemagne and Louis the Pious while Toledo was an *urbs regia*.[33]

It is possible, however, to consider some palaces as being located in disembedded capitals. A.H. Joffe has critically evaluated this concept of a centre founded by an elite keen to create a new centre unconnected to any

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relation arabe d'Ibrahim b. Yaqûb (xe siècle)," *Annales ESC* 21 (1966), 1048–1064, at 1060–1061, and contrast the account of Paderborn, 1061–1062; see F. Staab, "Fulda," in *Die Deutschen Königspfalzen 1. Hessen* (Göttingen: Vandenhoeck & Ruprecht, 2001), 511–611, at 518.

30 Staab, "Fulda," 523.

31 Fulda: S. Airlie, "The Frankish Aristocracy as Supporters and Opponents of Boniface," in *Bonifatius – Leben und Nachwirken. Die Gestaltung des christlichen Europa im Frühmittelalter*, ed. F. Felten, J. Jarnut and L. von Padberg (Mainz: Selbstverlag, 2007), 255–269, at 259, and Staab, "Fulda," 516–519; Jarrow: I. Wood, *The Origins of Jarrow: the Monastery, the Slake and Ecgfrith's Minster* (*Bede's World Studies: 1*) (Jarrow: Bede's World, 2008).

32 Rich material in M. de Jong, "Internal Cloisters: The case of Ekkehard's *Casus Sancti Galli*," in *Grenze und Differenz im frühen Mittelalter*, ed. W. Pohl and H. Reimitz (Vienna: Austrian Academy of Sciences, 2000), 209–221.

33 C. Hennessy, "The Topography of Constantinople," in *Oxford Handbook*, 202–216, at 206–207; J.L. Nelson, "Aachen as a Place of Power," in *Topographies of Power*, ed. de Jong and Theuws, 217–237, at 223–224; G. Ripoll, "Changes in the Topography of Power: from *civitates* to *urbes regiae* in Hispania," in *The Construction of Communities in the Early Middle Ages*, ed. R. Corradini, M. Diesenberger and H. Reimitz (Leiden: Brill, 2006), 123–147, at 134–140.

pre-existing context. Examples of such sites could include Constantinople itself, Ravenna (contrasted with Rome in its freedom from the presence of Senate and papacy) and Baghdad.[34] Matt Innes has highlighted the Carolingian rulers' development of palaces after *c.* 790, shifting to "dedicated royal centres, founded on existing royal sites cut off from the hustle and bustle of everyday social exchange," while Dominique Iogna-Prat sees a larger development in the post-Roman West away from the Late Roman Empire's system with two types of centre: the *sedes regni* where power was represented, and the *palatium*, where power was exercised.[35] But such palaces quickly plugged into the networks that they themselves created; nor could such palaces really be created *ex nihilo*. Charlemagne's Aachen was a town, not merely a royal palace, though the fact that it, like other Carolingian palaces, was not the site of a bishopric is also important.[36] In general, palaces needed to be open in that they were destinations of petitioners, of visiting envoys, of magnates seeking favour, etc. Carolingian rulers commanded that petitioners and accused be given access to the palace but also complained that their palaces were clogged with noisy people. Procopius grumbled that Justinian had forced people to come to the palace.[37]

How separate were such palaces? Were they marked off as distinct spaces that were difficult to enter? Controlled access to a palace was a combination of

34 A.H. Joffe, "Disembedded Capitals in the Western Asian Perspective," *Comparative Studies in Society and History* 40 (1998), 549–580; discussed in D. Deliyannis, *Ravenna in Late Antiquity* (Cambridge: Cambridge University Press, 2010), 2–3; on Baghdad, G. Martínez-Gros, "Le palais dans l'Islam classique: la clôture et l'éblouissement," in *Palais et pouvoir*, ed. Auzépy and Cornette, 35–44, at 40–41.

35 M. Innes, "People, Places and Power in Carolingian Society," in *Topographies of Power,* ed. de Jong and Theuws, 397–437, at 420; D. Iogna-Prat, *La Maison Dieu. Une histoire monumental de l'Église au Moyen Âge* (Paris: Éditions du Seuil, 2006), 107–108.

36 Joffe, "Disembedded Capitals," 563–566, contrasting Baghdad and Samarra: and see 573–574; Nelson, "Aachen," 224–225; and on pre-Carolingian settlement at Aachen, A. Schaub, "Gedanken zur Siedlungskontinuität in Aachen zwischen Römischer und karolingischer Zeit," *Bonner Jahrbücher* 208 (2008), 161–172.

37 Access and summons to palace: Formulary of Marculf, I, 38, I, 39, ed. K. Zeumer, MGH Formulae Merowingici et Karolini Aevi (Hannover, 1882), 67–68, translated in A. Rio, *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks* (Liverpool: Liverpool University Press, 2008), 172–173; Capitulary no. 32, *c.* 57, ed. A. Boretius, MGH Capitularia Regum Francorum I (Hannover, 1883), 88; capitulary no. 44, *c.* 8, ibid., 123–124; no. 64, *c.* 1, ibid., 153; no. 146, *cc.* 3, 6, ibid., 298; Nelson, "Aachen," 223. Procopius, *Secret History*, XXX, 27–34, trans. H.B. Dewing in Loeb series, vol. 6 (Cambridge, MA: Harvard University Press, 1971), 356–359; cited J. Shepard, "Courts in East and West," in *The Medieval World*, ed. P. Linehan and J.L. Nelson (London: Routledge, 2001), 14–36, at 16.

structures, architectural features, spatial patterns, etc., but was above all subject to human agency, i.e., decisions of the power-holder(s). And palaces were not easily or casually entered. This is perhaps something that may come to mind more readily when thinking of Constantinople or Islamic palaces than when thinking of western examples. In Constantinople the great ceremonial gate, the Chalke, was a point of contact and a boundary between the palace and the city. The removal of the image of Christ from there communicated imperial iconoclasm to the city, which reacted badly. This gate fell out of regular use in the tenth century when the emperors marked off the new palace on the lower terrace with walls. In tenth-century Cordoba, the edge of the palace quarter was where the bodies of executed rebels were displayed to the urban quarter across the river. At Kufa, prominent before the ʿAbbāsids promoted Baghdad, it was forbidden to enter the public space on horseback and, as Gabriel Martinez-Gros points out, rulers carefully watched such thresholds that could only be crossed after some act of humility (dismounting, giving up weapons, waiting).[38] The thirteenth-century friar William of Rubruk had an unfortunate experience in accidentally tripping over the threshold of a Mongol ruler's tent; such social space needed to be watched out for, though this example does not mean that Mongol tents parallel the sort of palaces that concern us here.[39]

It is tempting to think that Carolingian palaces were more open or porous than this. Some key sites such as Aachen and Ingelheim were not fortified.[40] Jonathan Shepard thinks that these sites' relaxed communal feasting or swimming (at Aachen) would have been distasteful "to the basileus, they smacked of collectivism," though the sheer scale of the feasting in Carolingian palaces (all those pigs at Paderborn) was as majestic as their decoration with marble, porphyry and painted plaster, etc. They could be closer to Cordoba than to *Beowulf*'s Heorot.[41] These western rulers can seem physically accessible,

38 Featherstone, "Emperor and Court," 508–509; Auzépy and Cornette, "Lieux de pouvoir," 24, 30; A. Christys, "The Meaning of Topography in Umayyad Cordoba," in *Cities, Texts and Social Networks 400–1500*, ed. C. Goodson, A. Lester, and C. Symes (Farnham and Burlington: Ashgate, 2010), 103–123, at 114–115; Martínez-Gros, "Le palais dans l'Islam," 39–40; cf. H. Kennedy, *When Baghdad Ruled the Muslim World* (Cambridge, MA: Da Capo Press, 2006), 45–46.

39 Pohl, "The *regia* and the *hring*," 465, and see 452.

40 U. Lobbedy, "Carolingian Royal Palaces: The State of Research from an Architectural Historian's Viewpoint," in *Court Culture*, ed. Cubitt, 129–153, at 138.

41 Shepard, "Courts," 23; C. Loveluck, "Problems of the Definition and Conceptualisation of Early Medieval Elites, AD 450–900: the Dynamics of the Archaeological Evidence," in

reachable in their private chambers (how private were they?), as in Einhard's depiction of Charlemagne hearing legal cases "while putting on his shoes and dressing," just as Alfred heard about a case while he stood and washed his hands in the chamber at Wardour.[42] Jinty Nelson has stressed the importance of the fact that the great church that Charlemagne built at Aachen was "not a palatine chapel but the baptismal church of a local community [a fact which] underlined its generalised, even democratised function."[43]

Professor Nelson rightly reminds us of the universal nature of the Christian community, and Aachen's church (exceptionally large for a Carolingian palace) follows the model of Constantinople's original Hagia Sophia, which served palace and city. It may be that the urban community and the palace could bleed into each other in sites such as Aachen; the Capitulary on the discipline of the palace of Aachen (820?) surely indicates this.[44] Nonetheless, the church in Aachen had a throne in it; it was not the church of an ordinary community. Not just anyone could wander in to put their case to Charlemagne while he was fumbling for his socks in the morning. Einhard tells us that it was the count of the palace who brought selected cases to him. And, at least at Aachen, some features such as the *solarium* were on an upper floor; access could be limited.[45] Recent work on the royal audience at the Merovingian court shows that an audience with a Merovingian king was a formal process, with gradations of approach, intermediaries leading and introducing petitioners to the king, etc., and all this expressed the distance and separateness of power.[46]

Théorie et pratiques des élites au haut Moyen Âge, ed. F. Bougard, H.-W. Goetz, and R. Le Jan (Turnhout: Brepols, 2011), 21–67, at 40–45.

42 Einhard, *Vita Karoli Magni*, *c.* 24, 29; Fonthill Letter, edited and translated in N.P. Brooks, "The Fonthill Letter, Ealdorman Ordlaf and Anglo-Saxon Law in Practice," in *Early Medieval Studies in Memory of Patrick Wormald*, ed. S. Baxter et al. (Farnham and Burlington: Ashgate, 2009), 301–317, at 303.

43 Nelson, "Aachen," 222.

44 Lobbedy, "Carolingian Royal Palaces," 137; Nelson, "Aachen," 223–224.

45 Einhard, *Vita Karoli*, *c.* 24, 29; M. de Jong, "Charlemagne's Balcony: The *Solarium* in Ninth-Century Narratives," in *The Long Morning of Medieval Europe. New Directions in Early Medieval Studies*, ed. J.R. Davis and M. McCormick (Aldershot and Burlington: Ashgate, 2008), 277–289; Lobbedy, "Palaces," 135, but see 153–154 for the differences between the halls in Paderborn (first-floor) and Ingelheim (ground-floor). The Aachen throne is problematic but is now accepted as dating from Charlemagne's reign; S. Schütte, "Der Aachener Thron," in *Krönungen. Könige in Aachen – Geschichte und Mythos*, ed. M. Kramp (Mainz: Philipp von Zabern, 2000), vol. 1, 213–222.

46 J. Barbier, "Un rituel politique à la cour mérovingienne: L'audience royale," in *L'audience. Rituels et cadres spatiaux dans l'Antiquité et le haut Moyen Age*, ed. J.P. Caillet and M. Sot (Paris: Picard, 2007), 241–263, at 249, 255, 260.

We know little of the architecture of the Merovingian *aulae* in which such procedures unfolded, though Josiane Barbier suspects that the threshold was an important element here.[47] We do have references to the Bishop Eugenius of Toledo, in a dedicatory poem to king Chindaswinth (642–653), imagining the text "approaching the royal presence, … framed hieratically by the threshold of the *aula*: "O you little book who will see the face of the king/at whose command you deserve to be freed of filth/ and to receive a clean garment after long neglect/so that you might begin to approach the threshold of the king's hall (*limen aulae regalis*)/ and to gaze on the throne'." The reference to making oneself look presentable before crossing the threshold is noteworthy. Corippus' poem from the 560s on Justin II depicts his accession in his passing from his own residence (a palace) at night to cross the imperial palace's threshold as dawn breaks and cocks crow (*limen … Augustae aulae*).[48] This makes the crossing of the threshold into a dramatic event, just as in Columbanus' abrupt leaving of the royal presence when he snubs the fearsome Brunhild and storms out of the royal hall (*regia aula*) accompanied by thunder as he crosses the threshold.[49] Part of the drama here lies in the fact that the holy man left the royal presence without permission, a point to which we shall return. Sometimes references to the palace's threshold are metaphorical or symbolic, but the references that we have looked at here point to the very layout of the palace as part of a system of control and thus of power.

But there are problems here for us. First, problems of evidence, i.e., information and precision. These two poems refer to the *aula,* but not to the whole of the palace complex itself. This kind of precision is actually a lack of precision in our evidence. Palaces, or at least some of them, were understood to be more than the *aula*; when did people enter into the space of the palace? Did they experience a transition into the palace and thus understand the palace as a separate space and how did this help constitute its distinctiveness? How did the ruler, and others, enter the palace? In tenth-century Cordoba, the ruler took care to be already present in solitary splendour before the courtiers

47 Barbier, "Un rituel politique," 249.

48 Eugenius, *Dracontiana*, ed. F. Vollmer, MGH AA 14 (Berlin, 1905), 27; Corippus, *In laudem Iustini Augusti minoris*, ed. and trans. A. Cameron (London: Athlone Press, 1976), I, lines 197–201, 42; both cited, translated and discussed in J.M. Pizarro, *The Story of Wamba. Julian of Toledo's Historia Wambae Regis* (Washington, D.C.: Catholic University of America Press, 2005), 17–18, 119–120.

49 Jonas , *Vita Columbani*, I, *c.* 19, ed. B. Krusch, MGH SRM (Hannover and Leipzig: Hahn, 1902), 87; Barbier, "Un rituel politique," 259–260.

entered.[50] If only we knew more about the unfortunate experience of the east Frankish magnate Engelschalk at Regensburg in 893: his enemies blinded him "at the town of Regensburg as he carelessly made to enter the king's palace without being brought before the king."[51] The threshold experience may elude us. In his study of the facades of Italian Renaissance palaces Charles Burroughs grapples with thresholds. "[Modern] city dwellers mostly enter and exit [buildings] casually with no special effort of reorientation … In contrast, the facade precisely marks the threshold between distinct domains, often dramatizing this with architectural and other elements functionally and symbolically related to the act of entering."[52] His study of a range of facades leads him to analysis of, e.g., the different facades of the ducal palace of Urbino ("an architectural antithesis" that "embodies and projects diverse aspects of … the self-image of the duke") and of the "grand itinerary" within the palace that guides a visitor to the "symbolic center" of the duke's apartment.[53] But when we turn to even a site as well-known as Aachen we have to admit to a "basic ignorance" of the details of its topography, while a recent study of Ravenna warns us that "we do not know the full extent of the palace at any period in Ravenna's history."[54] On the Ravenna palace, Andrea Augenti states that "absence of information regarding thresholds has made it impossible to reconstruct internal circulation patterns," though it is clear that such patterns would have changed when new rooms were added, doors blocked, floors raised, etc. all of which developments can be detected. We are likewise ignorant of much of the Great Palace of Constantinople.[55] Our understanding of what it might mean to enter a palace (complex) is necessarily imprecise, as indeed is our sense of how palace complexes operated as whole in their landscape and how elements of these complexes related to each other in the perception and experience of occupants and visitors. We have quite a fuzzy picture of some of our important palaces.

50 M. Barceló, "The Manifest Caliph: Umayyad Ceremony in Cordoba, or the Staging of Power," in *The Formation of Al-Andalus. Part 1: History and Society*, ed. M. Marin (Aldershot and Bromfield, 1998), 425–455, at 434–441, a reference I owe to Ian Wood.

51 *Annales Fuldenses*, *s.a.* 893, ed. F. Kurze, MGH SRG (Hannover: Hahn, 1891), 122, trans. T. Reuter, *The Annals of Fulda* (Manchester: Manchester University Press, 1992), 125.

52 C. Burroughs, *The Italian Renaissance Facade. Structures of Authority, Surfaces of Sense* (Cambridge: Cambridge University Press, 2002), 3.

53 Burroughs, *Italian Renaissance Facade*, 108, 110–112.

54 De Jong, "Charlemagne's Balcony," 280–281; Deliyannis, *Ravenna*, 58.

55 A. Augenti, "The Palace of Theoderic at Ravenna: a New Analysis of the Complex," in *Housing in Late Antiquity. From Palaces to Shops*, ed. L. Lavan, L. Özgenel and A. Sarantis (Leiden: Brill, 2007), 425–453, at 428 but see 449–450; Featherstone, "Emperor," 506.

Secondly, even if we had more information, what would be the best way to use it? Let us stay with the theme of access to the ruler. As we have seen, Charles Burroughs is able to chart the "grand itinerary" within the Urbino palace, though he does lament the lack of full texts on this. For Constantinople, J.M. Featherstone does not have a still-existing palace but can use texts such as the *De Ceremoniis* to examine tenth-century activities in the Chrysotriklinios (built by Justin II), an octagonal hall between the emperor's apartments (Koiton) and the more public parts of the palace. Featherstone is less impressed by possible ideological meanings of an octagonal chamber than by the fact that an octagonal space lent itself very well to the system of side chambers and curtains through which people had to go to get to the emperor, seated as he was in an apse oriented to the east under a mosaic image of Christ. When the emperor was not there, people could walk straight through the Chrysotriklinios unimpeded by the curtains and thus have a very different experience of the space.[56] We will return to the point that rooms, indeed entire palaces, continued to exist and have occupants even when the ruler was absent.

Western medievalists are as impressed by this sort of account as their ancestors were by the real thing. But there are other ways of looking at palace space and layout. Some archaeologists have turned to access analysis. Amanda Richardson provides a helpful definition: "… the permeability of each room in a complex has a social meaning. Changes in permeability therefore represent shifts in social arrangements. Access diagrams measure the permeability of rooms and areas, and those least accessible are termed 'deep'." Such access diagrams are not the same thing as a topographical plan or a map and in fact can add a more dynamic element while this method "makes visible patterns which would not be apparent through a study of architectural form alone."[57] Thus she looks at the new royal apartments in the Tower of London for Edward I (late thirteenth century) and notes that some historians have thought that, since they were right on the river, they might be more vulnerable than earlier apartments. But, "spacial analysis shows a different picture: the king's rooms are no more permeable from the river, in terms of access, than were those of Henry III, while they were now deeper than the queen's." This shows the sort of insights that spacial analysis can provide, though we might note that it requires a sure knowledge of the site's topography and we should not let it

56 J.M. Featherstone, "The Chrysotriklinios seen through *De Cerimoniis*," in *Zwischen Polis, Provinz und Peripherie. Beiträge zur byzantinische Geschichte und Kultur*, ed. L.M. Hoffmann and A. Monchizadeh (Wiesbaden: Harrassowitz, 2005), 845–852.

57 A. Richardson, "Gender and Space in English Royal Palaces *c.* 1160–*c.* 1547. A Study in Access Analysis and Imagery," *Medieval Archaeology* 47 (2003), 131–165, at 131.

obscure contemporary perceptions: Edward did not only rely on security as revealed by spacial analysis but ensured that the outside wall had plenty of arrowslits.[58]

Within palaces, access was indeed partly a question of architecture and space, but it was also about political control. To enter the royal hall "armed and refusing to leave when ordered" was a very hostile act and brought down the ruler's displeasure in the Reich in 1002. Louis the Pious was able to call Abbot Hilduin's bluff in the rebellion of 830 when the latter came armed (*hostiliter*) to the palace of Nijmegen by ordering him to leave the palace immediately and to spend the rest of the winter in a tent in Paderborn.[59] The contrast between palace and tent is pointed. Such examples are extreme but point to the palace as being a special place that imposed entry conditions and expectations of behaviour (see below).

Palaces, however, were not simple buildings with a single threshold and so the experience of entering one and being in it was not a linear one. Understanding this may modify our understanding of how power worked in and through a given palace, especially as there is so much that we do not know about the layout and buildings of actual palaces. Some sources give us a very linear picture of penetrating to a palace's centre, such as Notker of St. Gall's story of envoys being bundled along from one room to another in a relentless progress to the king's presence at the centre, or the depiction of tenth-century Byzantine envoys to Baghdad led on an exhausting trip along corridors and through quadrangles until they reached al-Muqtadir himself. But Notker had never actually been to Aachen, where he sets his story, and Nadia Cheikh points out that "al-Muqdatir's palace complex did not have functionally defined forms. Rather, it was human activity that defined the function of a given space" and this palace complex was large, a square mile in area, with a dazzling variety of buildings and spaces.[60] Envoys being ushered to the ruler's presence are a special case; not everyone who came to a palace was so tightly pinned on the ruler's palatial grid.

Bishop Thietmar of Merseburg gives us a valuable perspective here. In 1012 he was at Magdeburg helping to elect the new archbishop, Walthard. The king,

58 Richardson, "Gender and Space," 143; E. Impey and G. Parnell, *The Tower of London* (London: Batsford, 2000), 36–38; M. Morris, *A Great and Terrible King. Edward I and the Forging of Britain* (London: Hutchinson, 2008), 201.

59 Thietmar, Chronicon, V, *c.* 18, ed. Holtzmann, 243, translated Warner, *Ottonian Germany*, 217; Astronomer, *Vita Hludowici Imperatoris*, *c.* 45, ed. E. Tremp, MGH SRG (Hannover: Hahn, 1995), 462.

60 See the papers by Simon MacLean and Nadia Cheik in this volume, below.

Henry II, was disappointed that Magdeburg had proceeded to this election but accepted the result. Nonetheless, Walthard and Thietmar had to go to the king at his palace of Grone, some 160 km. away, a distance they covered in two or three days. Much visited by rulers between 941 and 1025, Grone was an impressive site, walled with a gate that gave access to a complex of buildings including a large hall, a chapel and other buildings. Thietmar and Walthard duly paid their respects to the king on arrival on Saturday, and next morning,

> after being summoned to the palace, we went to the king's sleeping chamber. Only Walthard entered, however, and remained there until the hour of terce, deep in conversation. When he emerged, Walthard was wearing the ring on his hand, which he displayed to us, saying: "Behold, you have a surety for future grace!" After we had all assembled in the presence of the king, we complied with the latter's request and elected Walthard, a decision with which each of the leading men then concurred. Walthard immediately received the pastoral staff from the king and swore to support him.[61]

This wonderful account speaks for itself. But this is not all that Thietmar did there. He also managed to get the king to promote his nephew and to make promises about Merseburg, but it is his experience of Grone that is striking. His lodgings were outside the palace complex itself (in a tent?) and the first thing that he did on Sunday morning was not to go to the king's chamber, but to celebrate mass for his "brothers." Thietmar did not experience Grone as a space monopolised by royal authority; he did not stay within it at night; his celebration of mass on the feast of St. Vitus shows that he was concerned with the liturgical calendar and his spiritual community as well as with the king's waking and business schedule. A week later, Thietmar was back in Magdeburg for Walthard's enthronement, and left laden with gifts. Grone was one place that he had to visit, and it was important, but it was not the only one: Magdeburg was another. And while he was at Grone, he did encounter the king, but he also did other things and was not in the heart of the palace all the time. He was able

61 Thietmar, Chronicon, VI, *cc.* 66–67, ed. Holtzmann, 356–358, trans. Warner, *Ottonian Germany,* 282–283, from which the citation is taken; T. Zotz, "Pfalz und Burg Grone," in *Göttingen. Geschichte einer Universitätstadt i. Von den Anfängen bis zum Ende des Dreißigjährigen Krieges*, ed. D. Denecke and H.M. Kühn (Göttingen: Vandenhoeck & Ruprecht, 1987), 31–50, at 38; and C. Ehlers, "Wie sich ambulante zu residenter Herrschaft entwickelt hat," in *Die Macht des Königs.* ed. B. Jussen, 106–124, at 108–112.

to move through a spacial network on a micro- and macro-scale. He did not lose himself in the palace.

Once people had gone inside a palace, rules applied. There was to be no brawling in the palace of Aachen, according to the *Capitulary on the discipline of the Palace of Aachen*; Alfred of Wessex decreed that no weapon was to be drawn in the presence of the king. A bloody episode involving Charlemagne's queen Fastrada at the palace of Frankfurt shows what could happen in a palace where weapons were carried.[62] Texts existed not only to spell out rules but also to offer guides to behaviour and to explain customs within the palace. Hincmar's *De ordine palatii* and Dhuoda's book for her son are two Carolingian examples, neither written in a palace, while the *De Ceremoniis* comes from within the Byzantine palace in that much of it was based on "self-help manuals" written by masters of ceremonies, etc. whose handy instructions on how to put together a banquet at short notice both reflected and fostered the self-consciousness of palace officials (as would the banquets themselves).[63] Social norms also operated, e.g., in gender roles and gender separation but surely some of these norms were also flouted, challenged or redefined in at least some parts of the palace.[64]

The terminology for palace officials points to specialisation, to an identity that is a palace identity and that is a sign of the palace's centrality to understanding the apparatus of supreme political power, whether among Franks, Byzantines or Visigoths: mayor of the palace, count of the palace, *papias, obtimates palatii*.[65] A collective identity centred on service in the palace is visible

62 Capitulary no. 146, *c.* 4, MGH Capit. I, 298, trans. Nelson, "Aachen," 239; Alfred's laws are most easily accessible in *English Historical Documents I 500–1042*, ed. and trans. D. Whitelock (2nd edition, London: Eyre Methuen, 1979), *c.* 7, 410; Fastrada: *Formulae Imperiales*, no. 49, ed. K. Zeumer, MGH Formulae, 323–324; and J.L. Nelson, "The Siting of the Council at Frankfort: Some Reflections on Family and Politics," in *Das Frankfurter Konzil von 794*, ed. R. Berndt (Mainz: Selbstverlag, 1997), 149–165, at 160–161 and reprinted in J.L. Nelson, *Rulers and Ruling Families in Early Medieval Europe* (Aldershot and Brookfield: Ashgate, 1999).

63 J.L. Nelson, "Was Charlemagne's Court a Courtly Society?" in *Court Culture*, ed. Cubitt, 39–58; R. Morris, "Beyond the *De Ceremoniis*," in *Court Culture*, ed. Cubitt, 235–254, at 237–238.

64 *Gender in the Early Medieval World. East and West, 300–900*, ed. L. Brubaker and J.M.H. Smith (Cambridge: Cambridge University Press, 2004).

65 Einhard glosses *maiores domus* as *palatii praefecti*, Einhard, *Vita Karoli*, *c.* 1, ed. Holder-Egger, 3; see P. Fouracre, *The Age of Charles Martel* (Harlow: Pearson, 2000), 28–29; and H.-W. Goetz, "Der fränkische maior domus in der Sicht erzählender Quellen," in *Vielfalt der Geschichte. Lernen, Lehren und Erforschen vergangener Zeiten. Festgabe für Ingrid*

in the use of terms such as *aulici*, *palatini*. This can be self-identification, as in Cassiodorus' description of himself as a "judge of the palace" (*sum quidem iudex Palatinus*) in a letter to Pope John in 533. Or it can be a label affixed from outside, as in Boethius' hostile reference to the *palatinae canes* of Theoderic.[66] Such figures had their own habits and routines within the palace, as in Einhard's visit to the court of Louis the Pious *c.* 830. Incidentally, it is worth noting that Einhard says that he headed for the palace when he had already been in the palace complex for several days; he means here that he was heading to the ruler's quarters: "Quite a few days later after arriving at court (*comitatum*), I went to the palace (*palatium*) early one morning since it is the habit of courtiers (*aulici*) to rise very early." This early rising is something that we can expect but is probably to be distinguished from a formal start of the day at the palace, with opening of rooms and doors, etc., as described in Book II of *De Ceremoniis* and in Liudprand's *Antapodosis*. Einhard's early rising brought him to the door of the ruler's bedchamber, but there he encountered another courtier and they chatted to each other about their own business, not about the ruler. Even as a member of the *aulici*, at the very door of the ruler's apartment, Einhard did not forget who he was or what really interested him. Figures such as Einhard were not permanently at the palace. This palace was not a black hole that annihilated anything non-palatial.[67]

Such early morning routines and casual chats among the palace's inhabitants are rather different from more formal and structured encounters. Leaving

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Heidrich, ed. S. Happ and U. Nonn (Berlin: WVB, 2004), 11–24, at 15–17. Count of the palace: see. e.g., Einhard, *Vita Karoli*, *c.* 24, ed Holder-Egger, 29; and P. Depreux, "Le role du comte du palais à la lumière des sources realtives au règne de l'empereur Louis le Pieux," *Frühmittelalterliche Studien* 34 (2000), 94–111. On the *papias*, A. Kazhdan, "Papias," in *The Oxford Dictionary of Byzantium*, ed. A. Kazhdan et al., III, 1580; Visigothic *obtimates palatii*: *Chronicle of Alfonso III*, *c.* 2, ed. J. Gil Fernández, *Cronicas Asturianas* (Oviedo: Universidad de Oviedo, 1986), 116; and cited Pizarro, *Story of Wamba* , 68–69.

66 Cassiodorus, *Variae*, XI, 2, ed. T. Mommsen (MGH AA, 12 Berlin, 1894), 331; trans. S.J.B. Barnish, *Cassiodorus: Variae* (Liverpool: Liverpool University Press, 1992), 151; and see S.J.B. Barnish, "Sacred Texts of the Secular: Writing, Hearing and Reading Cassiodorus" Variae," *Studia Patristica* 38 (Leuven: Peeters, 2001), 362–370, at 369; Boethius, *Philosophiae Consolatio*, I.4.13, ed. L. Bieler, *Corpus Christianorum Series Latina* 94 (Turnhout: Brepols, 1957), 8.

67 Einhard, *Translatio et miracula ss Marcellini et Petri*, II, *c.* 1, ed. G. Waitz, MGH SS 15 (Hannover, 1887), 245; *Charlemagne's Courtier. The Complete Einhard*, trans. P.E. Dutton (Peterborough, Ontario: Broadview Press, 1998), 83; S. Airlie, "The Aristocracy in the Service of the State in the Carolingian Period," in *Staat im frühen Mittelalter*, ed. S. Airlie, W. Pohl and H. Reimitz (Vienna: Austrian Academy of Sciences, 2006), 93–111, at 105. Liudprand, *Antapodosis*, V, *c.* 21, *Patrologia Latina* 136, col. 886, trans. Squatriti, *Liudprand*, 184.

the palace was formal and subject to rules. Archbishop Agobard of Lyon had to wait outside the emperor's presence in the palace of Attigny in 822 and had used that relatively informal time to speak to high courtiers about his concerns with Jewish matters. But he was not permitted conversation with the emperor once he was ushered into his presence and could only listen to the emperor giving him permission to depart. Agobard was silent and passive in this, but the event mattered. One can understand something of the shock of Columbanus' insultingly abrupt departure over the royal threshold.[68] To leave the palace without permission was to flout behavioural norms and to show that surveillance had failed; the ruler was not just insulted but threatened. In the winter of 831–832 Louis the Pious had pressured his troublesome son Pippin to come to Aachen and had deliberately given him a frosty welcome. Pippin got the message and soon fled the palace, at night, to his father's baffled fury: "he had never thought that such things could happen where his son was concerned or that he could actually flee his father's presence." A few decades later King Charles the Bald was equally furious with a bishop who fled the palace of Attigny by night. Night seems to have exacerbated the offence while making it possible.[69]

All these elements – distinctiveness of the palace as a place to enter, rules of conduct, resident experts, routines, hierarchy of space and access, formal leave-taking, etc. – were particularly prominent in foreign visitors' encounter with palaces. This is partly because of the nature of the texts describing their experiences. "Insider" texts tell how visitors are to be treated, to be welcomed, over-awed and controlled; "outsider" texts highlight the strangeness and otherness of the experience. Among insider accounts, we might consider Corippus' description of barbarian envoys flinching at the weaponry of the guards of the Emperor Justin II (565–578) even while seeing "the palace as another heaven."

68 S. Airlie, "I Agobard, Unworthy Bishop," in *Ego Trouble. Authors and their Identities in the early Middle Ages*, ed. R. Corradini et al. (Vienna: Austrian Academy of Sciences, 2010), 175–183.

69 *Annals of St.-Bertin*, *s.a.* 831, 832, *Les Annales de Saint Bertin*, ed. F. Grat, et al. (Paris: Klincksieck, 1964), 14–15; *The Annals of St.-Bertin*, trans. J.L. Nelson (Manchester and New York: Manchester University Press, 1991), 24; S. Airlie, "Not Rendering "unto Caesar': Challenges to Early Medieval Rulers," in *Staat*, ed. Pohl and Wieser, 489–501, at 496. The nocturnal and daylight manoeuvrings of Otto I's brother Henry at Ingelheim and Frankfurt are instructive, Adalbert, *Continuatio Reginonis*, *s.a.* 941, 942, ed. F. Kurze, *Reginonis abbatis Prumiensis cum Continuatione Treverensi*, MGH SRG (Hannover: Hahn, 1890), 161; *History and Politics in Late Carolingian and Ottonian Europe. The Chronicle of Regino of Prüm and Adalbert of Magdeburg*, trans. S. MacLean (Manchester: Manchester University Press, 2009), 246.

As for outsiders, we might think of John of Gorze, on his mission to tenth-century Cordoba, experiencing a long wait outside the palace proper which his *Vita* describes as distant from his lodgings. But this distance was experienced subjectively through time, as in the long wait to be received, and the ruler could manipulate the distance in, e.g., communicating through go-betweens and regulating access to the church of St. Martin close to John's lodgings.[70] John has to obey various rules of conduct restricting his movements and is also told about the rules of Cordoba, which are truly impersonal as they apply to everyone, even the ruler (a theme also sounded in Notker of St. Gall). He also deals with go-betweens who are experts in palace matters and who help him through a world of rumours, secret talks and stand-offs before he can enter the royal *cubiculum*. Similarly, Liudprand of Cremona gives us palace routine through a magnifying glass in, for example, his strenuous efforts to get permission to leave the wretched place, while Byzantine envoys to al-Muqtadir get the full tour of palace corridors and courtyards to soften them up before they reach the caliph's chamber.[71] But the experience of envoys was heightened, focused and limited and need not be the experience of native petitioners, though it would have been close to that, and would not necessarily be the same as that of great native magnates who knew their ruler and his palaces well, though the latter's witnessing of the arrival of the former might defamiliarise the palace for them. Nonetheless, all experienced the palace as a place apart that had to be entered and left, with its own customs and rules.

3 Palaces and Permanence

We turn now to features of objective existence, of permanence, as aspects of the institutionality of the palace. Palaces existed in landscapes and continued to exist in them even when the ruler was not present and holding court there. As *sedes imperii* or *urbs regia* they could embody an abstract, non-personal

70 Corippus, *In Laudem Iustini*, III, lines 231–263, 67–68, cited Shepard, "Courts," 18; John, *Vita Johannis abbatis Gorziensis*, *cc*. 118, 119, 124, *La Vie de Jean, abbé de Gorze*, ed. and trans. M. Parisse (Paris: Picard, 1999), 144–145, 150–151; F. Valdés Fernández, "Die Gesandtschaft Johannes von Gorze nach Cordoba," in *Otto der Grosse. Magdeburg und Europa*, ed. M. Puhle, 2 vols (Mainz: Philipp von Zabern, 2001), I, 525–536, at 530; A. Christys, *Christians in Al-Andalus 711–1000* (London and New York: Routledge, 2002), 109–113.

71 *Vita Johannis*, *cc*. 119–129, 131–136, 144–161; Liudprand, *Legatio*, *cc*. 31, 32, 35, 38, 50, 57, *Patrologia Latina* 136, cols 921–922, 923, 924, 929, 932; *Liudprand*, trans. Squatriti, 257–259, 261, 269–270, 274; see also Nadia Cheikh's paper in this volume, below.

power and authority. As buildings, they had a (relatively) permanent existence, but how did they function as institutional objects? The first point to make is that some rulers never left: their tombs remained in their palaces: e.g., Theoderic (d. 526) was buried in an extraordinary tomb in Ravenna, Charlemagne (d. 814) was buried in Aachen, Henry I (d. 936) and his wife were buried in Quedlinburg and when their descendants visited the site to celebrate Easter, as they frequently did, they experienced a "sacral family reunion" there, in Karl Leyser's memorable phrase.[72] But Aachen did not function as a necropolis for Carolingian royalty: none of the next two generations of Carolingian royalty were buried there; the Frankish realm, like the Ottonian, was polycentric. The contrast with Byzantium is striking and has already been made by Nelson in her discussion of rulers' funerals. In Constantinople, the church of the Holy Apostles was the main resting place of a series of emperors from the fourth century until the tenth when imperial burial patterns changed, though the city remained the setting. The city provided space and opportunities for a funeral procession that the close packed buildings of the Aachen complex could not do, while its scale and elaborateness permitted creative strokes such as Basil II's decision to place his own tomb within the Hebdomon palace complex, outside the city walls, so that he might permanently defend the city.[73]

The location of such burials reminds us that dynastic legitimation was not their primary purpose. Where we can find a royal/dynastic necropolis, as in the east Frankish Carolingian line in the late ninth century, we can indeed see an elaborately built site, but it is at an abbey, Lorsch. This site can certainly be understood as standing in a relation to Frankfurt nearby, where there was a royal palace, but placing tombs at Lorsch was to place them in a site where prayer and liturgical commemoration were the key activities. Similarly, the graves of Henry I and Mathilda at Quedlinburg were buried in the crypt of the church of St. Servatius, which was no longer simply a palace chapel.[74] In

72 Deliyannis, *Ravenna*, 124–136; J.L. Nelson, "Carolingian Royal Funerals" in *Rituals of Power. From Late Antiquity to the Early Middle Ages*, ed. F. Theuws and J.L. Nelson (Leiden: Brill, 2000), 131–184, at 145–153; K. Leyser, *Rule and Conflict in an Early Medieval Society. Ottonian Saxony* (London: Edward Arnold, 1979), 90. Henry III's remains were divided between Goslar and Speyer, see T. Zotz, "Die Goslarer Pfalz," in *Deutsche Königspfalzen,* vol. 4, *Pfalzen-Reichsgut-Königshöfe*, ed. L. Fenske (Göttingen: Vandenhoeck & Ruprecht, 1996), 248–287, at 281.

73 Nelson, "Funerals," 153–169, 173–176; Hennessy, "Topography," 208; P. Stephenson, "The Tomb of Basil II," in *Zwischen Polis*, ed. Hoffmann, 227–238; and NB Basil's epitaph, 230, and the list of emperors" tombs, 228–229.

74 Nelson, "Funerals," 166–169; and S. MacLean, *Kingship and Politics in the Late Ninth Century. Charles the Fat and the End of the Carolingian Empire* (Cambridge: Cambridge

Constantinople, emperors were buried in the church of the Holy Apostles, near Constantine's walls and some distance from the palace complex. Theoderic's tomb was in a cemetery well away from his palace.[75] Burial in a sacred site and liturgical commemoration are key factors in all this and the display of a sequence of rulers in death could also function as a way of repairing the rupture of death in the polity. Revolutionary France understood royal tombs in St. Denis as an emblem and instrument of royal dynasty and not removed from politics into some neutral ecclesiastical sphere.

Palaces could also contain images of rulers. As Reuter says of Ottonian palaces, "we must envisage [them] as symbolically inhabited by the king even in his absence." Henry I had a painting of his 933 victory over the Hungarians in his palace at Merseburg. In Vandal North Africa *c.* 500, King Hilderic's palace at Anclae near Carthage had wall-paintings of Roman emperors (presumably Hilderic had inherited these rather than commissioning them) and court poets celebrated Hilderic as part of that sequence of rulers.[76] Similarly, an account (820s) of the Carolingian palace at Ingelheim describes its paintings of rulers from Cyrus through to Charlemagne, a sequence that included Constantine building Constantinople. Theodelinda, queen of the Lombards, had scenes from Lombard history depicted on the wall of the palace at Monza.[77] Such images are of various kinds: the Vandal and Carolingian ones are of a sequence of rulers; like a series of tombs, such a sequence serves to highlight continuity by displaying a past to the present occupants and witnesses in the palace, a past that can legitimate present rulers (ancestry, etc.) but which also, by virtue of being a sequence, proclaims that there will be a future. Such images thus utter messages of continuity in a site that itself testifies to that through its monumental presence in the landscape.

The fact that we know about these particular examples only from texts is itself important: contemporaries or later witnesses knew about these images and we can thus gauge something of their impact and renown, while texts, if

University Press, 2003), 132–133; G. Leopold, "Archäologische Ausgrabungen an Stätten der ottonischen Herrscher (Quedlinburg, Memleben, Magdeburg)," in *Herrschaftsrepräsentation im ottonischen Sachsen*, ed. G. Althoff and E. Schubert (Sigmaringen: Thorbecke, 1998), 33–76, at 33–38.

75 Nelson, "Funerals," 174; Deliyannis, *Ravenna*, 125.

76 Reuter, *Medieval Polities*, 141; but the reference to Thietmar should be supplemented with Liudprand, *Antapodosis*, II, *c.* 31, *Patrologia Latina* 136, col. 823, *Liudprand*, trans. Squatriti, 89–90; and see Zotz, "Symbole," 372; A.H. Merrills, "The Secret of my Succession: Dynasty and Crisis in Vandal North Africa," *Early Medieval Europe* 18 (2010), 135–159, at 152–155.

77 Airlie, "The Palace of Memory," 10; W. Pohl, "Gender and Ethnicity in the early Middle Ages," in *Gender*, ed. Brubaker and Smith, 23–43, at 38.

they circulated, could transmit information about them to audiences outside the palace. But the fact that we know of them only from texts reminds us that much is lost, our access to them is not direct and thus it is difficult to measure that impact and importance. Examples of this kind of image have, of course survived. Some of the best known examples are in Ravenna, including the famous mosaics of Justinian and Theodora and attendants. These are particularly relevant for us as this imperial pair never visited Ravenna, which was the seat of rule for an official, the exarch, who occupied the "sacred palace," a term that echoed that for the palace in Constantinople. Other surviving images in Ravenna also depict Justinian and even the palace itself in a remarkable display of monumental self-consciousness. These ruler images replaced images of the rule of the displaced Goths, images important enough to have been deliberately and ostentatiously obliterated (Sant'Apollinare Nuovo, in the palace area).[78]

The famous images of Justinian and Theodora are not, however, in a palace hall (as the ruler images of Ingelheim were) but in a church, San Vitale, quite separate from the palace. It is worth recalling here that, as Deborah Deliyannis points out, the first imperial portraits to be found in a church anywhere were in Ravenna (fifth-century, church of San Giovanni Evangelista, north of the palace), and we should indeed note that they were in a church. They were certainly dynastic but they also displayed the dynasty's "connections to God and the Orthodox Church." We might also recall that the courtiers of Constantinople who walked through the Chrysotriklinios when the emperor was not there would have seen his throne but would also have seen the great mosaic of Christ.[79] Not every image in a palace was of the ruler.

We might class together with these images objects such as thrones, regalia, etc. which could form part of the fittings of palaces and thus pointed to rulership beyond the lifespan or individual presence of rulers. Here Constantinople had the edge. It contained a vast amount of venerable objects, making it rather like the Vatican Museum in one view, and was particularly adept at calling up the deep past of rulership by re-activating old disused parts of the palace complex when necessary.[80] Many of the precious objects in Constantinople and

78 Deliyannis, *Ravenna*, 164, 238–250, and see also 272 on a possible depiction of Constans II who granted privileges to the church of Ravenna, but who did not reach Ravenna on his Italian sojourn.

79 Deliyannis, *Ravenna*, 68–69, map on 202; Featherstone, "The Chrysotriklinios."

80 A.P. Kazhdan and M. McCormick, "The Social World of the Byzantine Court," in *Byzantine Court Culture from 829 to 1204*, ed. H. Maguire (Washington, D.C.: Dumbarton Oaks, 2004), 167–197, at 195; contrast the barbarian world in Pohl, "The *regia* and the *hring*," 457–458.

other palaces were sacred relics and while their presence would help bathe the ruler in an aura of holiness, not all such objects would necessarily have been understood or experienced as being primarily related to the ruler. Even in palaces, not everything was about the ruler. Nor did all objects make the desired impact. Contemporaries were not just passive consumers; they could respond critically to monumental depictions of rulers. Charlemagne thought highly enough of the equestrian statue of Theoderic to take it from Ravenna to Aachen; but a generation later a loyal Carolingian courtier thought very little indeed of this image of a heretical ruler.[81]

Beyond what was inside them, the palaces themselves spoke architecturally. The siting of palaces on hills, as in many German examples, was eloquent. Size and scale proclaimed palaces to be special, a spectacular concentration of resources. The relation of palaces to surrounding fiscal land suggests a more humdrum but equally important ability and need to exploit resources, and such work would continue even when the ruler was not present.[82] The ability to build and maintain elaborate palaces testified to power, and contemporaries noted this in depictions of rulers as great builders, while the very materials of palaces also demonstrated this.[83] Some palaces contained treasure and the preserving and gaining of this in a palace context would repay thought here: Alfred of Wessex did not carry all his pennies around with him; the Merovingian king Lothar I died at Compiègne in 561, was buried at St. Medard, Soissons, but his treasure was kept at the royal estate of Berny and that was his son's first stop after the funeral; queens often held the access to treasure. The reception and distribution of treasure within palaces would also repay consideration. Charlemagne's lavish showering of gold, silk and gifts on his loyal followers at Regensburg after the failed conspiracy of Pippin 792–793 is different from Constantine Porphyrogenitos' distribution of pay in the palace of Constantinople in 950.[84]

81 M. Herren, "The 'De Imagine Tetric' of Walahfrid Strabo: Edition and Translation," *Journal of Medieval Latin* 1 (1991), 118–139.

82 See, e.g., Reuter, *Medieval Polities*, 141, for German palaces; on Carolingian estates, see now D. Campbell, "The *Capitulare de Villis*, the *Brevium exempla* and the Carolingian Court at Aachen," *Early Medieval Europe* 18 (2010), 243–264.

83 But see Untermann, "Die architektonische Inszenierung," 18–19, on buildings as compensation for lack of power.

84 Alfred's will is translated in *Alfred the Great*, ed. S. Keynes and M. Lapidge (Harmondsworth: Penguin, 1983), 173–178, and see R. Balzaretti, J.L. Nelson, and J.R. Maddicott, "Debate: Trade, Industry and the Wealth of King Alfred," *Past and Present* 135 (1992), 142–188, especially 171–173; Gregory of Tours, *Historiae*, IV, *cc.* 21, 22, ed. B. Krusch and W. Levison, MGH SRM 1.2 (Hannover: Hahn, 1951), 154; Liudprand, *Antapodosis* VI, *c.* 10, *Patrologia Latina*

To build palaces, rulers could mobilise resources on a supra-regional, indeed regnal scale. Thus the church of Reims owed labour service for the palace of Aachen and the marble for the fifth-century columns of the church of the Apostles in Ravenna came from Greece, while Theoderic ordered materials from Rome for his own building projects in Ravenna.[85] The existence of palaces depended on pre-existing apparatus of control and exploitation. Such general points can hold true but we should remember that specificities of scale and topography could provide different experiences for the people on various sites. Aachen was not a typical Carolingian palace. The changing urban fabric of eleventh-century Speyer may well have meshed with the town's role as a place for demonstrating power but its streets related more to Speyer's sacred topography than to the palace.[86] Generalisations here as elsewhere are, simply, generalisations.

The architecture of a palace could echo other palaces in an evocative and competitive architectural dialogue. Thus Ravenna's buildings and features may well have been deliberately designed to imitate Constantinople; this included the names of palaces (Laurel = Daphne) and of their gates and entrances (Calchi = Chalke). Deborah Deliyannis, however, is rightly cautious on this point, and imitation and echoing were not simply slavish but could be creative. Some of what may seem like copying may well be in fact the result of places having the standard kit of a late Roman *sedes imperii*: palace, walls, circus, churches, etc.[87] The standard elements to be found in Carolingian palaces (hall, church/chapel) would have made visitors familiar with a palace that they might not have hitherto visited. The king seems to have explicitly wanted elements of the late ninth-century palace of Compiègne to recall Aachen. As for Charlemagne's great church at Aachen, its model may have been San Vitale in Ravenna but Charlemagne was aiming to imitate and evoke Hagia Sophia in Constantinople. Aachen's church was thus a fitting site for him to meet an important embassy from Constantinople in 812. But did all contemporaries pick up such echoes? It may be that visiting envoys, not native courtiers or aristocrats, were the target audience for such parallels, though a tenth-century chronicler at Wissembourg thought that Louis the Pious had tried to imitate Aachen at Thionville. And who understood all the symbols encoded in the

136, cols 897–898; and *Liudprand*, trans. Squatriti, 200–202; *Annales Laureshamenses*, *s.a.* 792–793, MGH SS I, 35.

85 Airlie, "Palace of Memory," 4; Deliyannis, *Ravenna*, 102, 123 and see 118–119 on supplying the town of Ravenna.

86 Untermann, "Die architektonische Inszenierung," 20–23.

87 Deliyannis, *Ravenna*, 51, 56–57; cf. Untermann, "Die architektonische Inszenierung," 25.

Aachen church's architecture? Architecture could not function on its own: it needed an audience and action.[88]

When the ruler was not present, palaces' special qualities remained, and thus the ruler also remained in some form. The best known example of this is the episode of Pavia in 1024–1025 when rebels who had destroyed the emperor's palace there on the death of Henry II were told in no uncertain terms that kingdoms, unlike rulers, never died, and that their attack on the palace building, which was thus symbol and instrument of rule, was an attack on the objectively existing realm. Historians have eagerly fastened on this as a welcome illustration of *Staatlichkeit*.[89]

We can supplement this from other angles. Buildings did not look after themselves and palaces thus continually demanded resources and required the exercise of rule; in return, they made that rule visible and acted as vehicles for making it permanent in a landscape. Carolingian kings kept an eye on what happened in palaces when they were not there. A property transaction of 879 that took place in the "royal palace" of Bodman did so by the absent king's permission. In 877, King Charles the Bald, on the eve of a trip to Italy, gave careful instructions regarding to which palaces his unsatisfactory son was to be denied entry while Charles was away. Here, the absence of the son from these palaces would reflect the remote control of the absent senior king. Promulgated at an assembly, these instructions were to be remembered by aristocrats and, one assumes, palace staff.[90] The Arab envoys from Spain who scurried from Louis the Pious' court at Compiègne to Aachen presumably did not arrive at an empty palace as Aachen made ready to receive the ruler. When the Emperor Nicephorus Phocas left Constantinople, Liudprand still found the palace full of courtiers and officials, officials who liked to chat about palaces; they classified

88 M. Untermann, ""opere mirabilia constructa': Die Aachener "Residenz" Karls des Grossen," in *799 Kunst and Kultur der Karolingerzeit. Karl der Große und Papst Leo III. in Paderborn*, ed. C. Stiegemann and M. Wemhoff, 3 vols (Mainz: Philipp von Zabern, 1999), III, 152–164, at 158–159; cf. Untermann, "Die architektonische Inszenierung." On differing responses to palaces, C. Cubitt, "Introduction," in *Court Culture*, ed. Cubitt, 13; Thionville and Aachen: Adalbert, *Continuatio*, *s.a.* 939, 161, trans. MacLean, *History and Politics*, 245.

89 Zotz, "Grundlagen," 518–519.

90 *Urkundenbuch der Abtei Sanct Gallen*, ed. H. Wartmann 3 vols (St. Gallen, 1863–1882), III, Anhang nr 8, 688–689; Airlie, "Palace," 11–12. Capitulary no. 281, *c.* 32, *Capitularia Regum Francorum*, ed. A. Boretius and V. Krause, MGH Legum Sectio II (Hannover: Hahn, 1883, 1897), vol. 2, 361; and J.L. Nelson, *Charles the Bald* (London: Longman, 1992), 249. On "staff" in Carolingian estates and palaces, see Campbell, "The *Capitulare de villis*"; and the suggestive ideas of R. McKitterick, *Charlemagne. The Formation of a European Identity* (Cambridge: Cambridge University Press, 2008), 204–213.

emperors in terms of their relationship to the palace: "The Emperor Constantine was a mild man who always stayed in the palace … Nicephorus … eager for combat, avoids the palace like the plague …"[91]

Finally, the palace in the landscape played a role in conflicts. In the polycentric world of the Ottonians, the ruler could not control all his palace staff as some important sites were under the sway of great nobles, not courtiers. Thus when Otto I deemed Ingelheim too insecure and found that the gates of the "royal city" of Mainz only opened reluctantly to him in 953, he knew that he was being challenged; Otto's unease would only have increased when he went on to Aachen, in the territory of the duke of Lotharingia, to celebrate Easter and found that "nothing worthy of him had been prepared there." These were public snubs, declarations of intent through palace sites. If rulers could not always gain secure entry to actual sites, we might need to be cautious on estimating the impact of that symbolic presence discussed above.[92]

A particularly striking case is the attack on Aachen by the west Frankish king Lothar in 978. Surprising the Emperor Otto II there, Lothar chased him out of his palace, occupied it for some days and turned the bronze eagle on the palace roof as a sign of victory before withdrawing back to the west. In a recent analysis of the medieval "historiographical footprint" of the event, Theo Riches notes that only one of the medieval authors (Richer) on this episode explicitly refers to Charlemagne "in connection with Lothar's manipulation of the eagle on the palace roof" and that there is not "much reference to Aachen as a symbolic imperial capital." He concludes that "Royal and imperial charisma could not be institutionalized in a place but was renewed with every new king." A fair point for the later sources that he examines, and Aachen's prominence, and actual use by kings, certainly fluctuated in the Carolingian era.[93] But some forms of royal authority could be "institutionalized in a place" and examining this episode of 978 can illuminate some key institutional themes such as

91 *Annales Regni Francorum*, *s.a.* 816, 817, ed. F. Kurze, MGH SRG (Hannover: Hahn, 1895), 144–145; Liudprand, *Legatio*, *c.* 55, *Patrologia Latina* 136, cols 931–932; and *Liudprand*, trans. Squatriti, 273.

92 Adalbert's account is very instructive on the role of key sites, *Continuatio*, *s.a.* 953, ed. Kurze, 166–167, *History and Politics*, trans. MacLean, 253–255; Widukind, *Res Gestae Saxonicae*, III, *cc.* 13, 14, ed. H.E. Lohmann and P. Hirsch, MGH SRG (Berlin, 1935), 111; Leyser, *Rule and Conflict*, 9–10; Reuter, *Medieval Polities*, 128.

93 T. Riches, "The Carolingian Capture of Aachen in 978 and its Historiographical Footprint," in *Frankland. Essays in Honour of Dame Jinty Nelson*, ed. P. Fouracre and D. Ganz (Manchester: Manchester University Press, 2008), 191–208, at 207, 208. On Aachen's ups and downs, Nelson, "Aachen," 233–234 and McKitterick, *Charlemagne*, 157–162.

impersonality, i.e. materiality and objective existence and continuity as well as the role of strategies of memory and physical structures.

I shall lean heavily, though not exclusively, on Richer's account. A contemporary of the events of 978, Richer wrote in the 990s. Many modern historians have taken a dim view of Richer's worth as a chronicler, berating him for unoriginality in a slavish use of models such as Sallust while also criticising his own all too fertile inventiveness.[94] They have also been unimpressed by Lothar's antics in Aachen: "an empty triumph"; "as spectacular as it was useless." Recently, however, Jacek Banaskiewicz has argued strongly for Richer as a talented narrator in this episode (though that need not make him any more reliable).[95] I too think that the coherence of Richer's account of 978 is striking, not least because it expresses the coherence of "le système palatial franque." Richer himself was no eyewitness to the events in Aachen but the Reims historian Flodoard together with the abbot of the monastery to which Richer was to belong had visited it in 951. Richer relied on Flodoard as a source for the earlier part of his *History* and duly copied his account of an Easter court at Aachen in 949, attended by the western queen and envoys from Greece, Italy and England.[96]

Richer's account shows us a palace system working in a landscape. First of all, Richer's *palatium* at Aachen is a place of kings. He opens his account with a reference to Otto II staying there with his wife Theophanu; he refers to Theophanu as pregnant (and she was: Richer is well informed). This Aachen is thus a site for dynastic display: Theophanu's pregnant state proclaims a future for the Ottonian line. It is also a regnal centre: Otto is there with the magnates of the realm (*regnique principibus*).[97]

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94 See the account of the events in Richer of Saint-Rémi, *Histories*, III, *cc.* 68–71, ed. and trans. J. Lake, 2 vols (Cambridge, MA: Harvard University Press, 2011), II, 110–117; C. Brühl, *Deutschland-Fankreich. Die Geburt zweier Völker* (Cologne, Vienna: Böhlau, 1990), 146–147, 564–565, for scholarly snortings at Richer; more helpful: H. Hoffmann, "Die *Historien* Richers von Saint-Remi," *Deutsches Archiv für Erforschung des Mittelalters* 54 (1998), 445–532; see also J. Glenn, *Politics and History in the Tenth Century. The Work and World of Richer of Reims* (Cambridge: Cambridge University Press, 2004).

95 J.L. Kupper, "La part de l'empereur Lothaire Ier: aspects politiques, institutionels et religieux (843–1056)," in *De la mer du Nord à la Méditerranée. Francia Media, une région au coeur de l'Europe* (*c. 840–c. 1050*), ed. M. Gaillard et al. (Luxembourg: Centre luxembourgeois de documentation et d'études médiévales, 2011) 11–39, at 34; J. Banaszkiewicz, "Was soll im Juni 978 um die Johanissnacht in Aachen geschehen sein?" *Frühmittelalterliche Studien* 43 (2009), 393–406.

96 Glenn, *Politics and History*, 229; M. Sot, *Un historien et son Église. Flodoard de Reims* (Paris: Fayard, 1993), 49; Richer, *Histories*, II, *c.* 86, ed. Lake, 350–353.

97 Richer, *Histories*, III, *cc.* 68, 71, ed. Lake, 110–111, 116–117.

Secondly, his Aachen is a place of things, of objects and materiality. These objects are royal: royal tables (*regiae mensae*) are overturned and royal insignia (*regia … insignia*) are snatched up; Otto is described as having left behind *apparatus regius* as well as the palace which thus of course appears itself as royal (*relicto palatio atque regio apparatu*). It would be nice to know what these were. Indeed it would be nice to know more about the connection of such objects to palaces in general. One might think here in a Frankish context of the cloak of St. Martin or the regalia that Odo took from St-Denis in 888 (simultaneously abbey and palace). The western medievalist might be familiar with the panorama of rich objects in Schramm's *Herrschaftszeichen und Staatsymbolik* but it is sobering to hear from ancient historians that only one set of regalia has been recovered from imperial Rome: a handful of spears, a sceptre and some glass orbs found on the Capitoline hill in Rome and dated to the time of Maxentius (d. 312).[98] The Aachen objects were not symbols of rule that could, officially or magically, grant status to their holder; whatever these *insignia* were they do not carry the meanings that the *ornamenta palatii* of Ravenna did when Odovacer sent them to Constantinople or when they duly returned to Ravenna once Theoderic was established there in 497. Nor do they appear to be like, say, the Holy Lance, possession of which was an indispensable qualification for rulership in the Ottonian realm, as seen in the tense manoeuvrings to get hold of it in 1002.[99] Lothar does not seize these objects in order to proclaim himself king of Lotharingia. In fact, Richer does not explicitly say that Lothar actually took them; it is his lowly men who consume the food on the royal tables and we are not told by whom the insignia are seized. This is thus a story of reversal, of humiliation for Otto whose royal dignity is mocked and depleted. Nonetheless, the objects remain royal even though they have been abandoned by one king and do not really belong to the intruding ruler. Royalness remains in the palace even if its ruler does not. The suggestion that the Lothar cross in the Aachen treasury may be connected to our Lothar is thought-provoking here.[100]

98 Richer, III, *c.* 71, ed. Lake, 116–117; Banaszkiewicz, "Was soll im Juni 978," 399, 404–405; S. Airlie, "Les élites en 888 et après, ou comment pense-t-on la crise carolingienne," in *Les élites au haut Moyen Âge. Crises et renouvellements*, ed. F. Bougard, L. Feller and R. Le Jan (Turnhout: Brepols, 2006), 425–437, at 432; L. Lavan, "Political Space in Late Antiquity," in *Objects in Context. Objects in Use. Material Spatiality in Late Antiquity*, ed. L. Lavan, E. Swift and T. Pulzeys (Leiden: Brill, 2007), 111–128, at 113.

99 Deliyannis, *Ravenna*, 110; Thietmar, Chronicon, IV, *c.* 20, ed. Holtzmann, 188–190; *Ottonian Germany*, trans. Warner, 187.

100 Banaszkiewicz, "Was soll im Juni 978," 400; L. Falkenstein, *Otto III und Aachen* MGH Studien und Texte Bd 22 (Hannover: Hahnsche Buchhandlung, 1998), 59 n. 243.

Richer also tells us about another object: a bronze eagle on the top of the palace (*in vertice palatii*) placed there by Charlemagne himself and which Lothar turned to face the east as the Germans had kept it facing the other way, to the west, symbolising (*subtiliter significantes*) by this that they could crush the Gauls any time they wanted. This eagle was obviously prominent and was probably on the top of the roof of the ruler's hall and Nelson is surely right in claiming that it evoked both imperial power and Christian Gospel (Saint John), though texts do not say this.[101] This is a very particular image of Aachen: the drawing of Aachen in Ademar of Chabanne's *Chronicle* is of the church in Aachen with crosses, not eagles, on its towers. Richer's anecdote is confirmed in the chronicle of Thietmar of Merseburg (born *c.* 975), written some twenty years later, but Thietmar says that Lothar turned the eagle ("which stood on the east side of the palace") in his direction, i.e., to face west. Further, Thietmar gives a different reading of the symbolism of the direction: "it was the custom of all who took possession of this place to turn it in the direction of their own kingdom," a phrase that suggests that this was a contested place.[102]

Riches concludes that the different accounts of the eagle's turning show that it "was not an established or well-known tradition and that the intended insult, while understood in outline, became garbled in detail." Reuter, however, thought differently, seeing Lothar's gesture as "obviously charged with public meaning" but belonging to that repertoire of contemporary symbolism and gesture which had "inherent ambiguity."[103] But surely the essential meaning of Lothar's gesture was clear to contemporaries and the palace was a perfect vehicle for its performance. The surface detail (was the direction east or west?) and signal (glory of one ruler, or hostility to another?) may indeed have been confused (Riches) and ambiguous (Reuter), but the essential meaning is clear in both accounts: a victory for Lothar and the active role of the palace in the landscape to proclaim it. This was understood in places as far apart as Reims and Merseburg; Richer and Thietmar both understood how the fabric of the palace of Aachen worked here. And the memory of Charlemagne may resound in Thietmar's text too. It is true that he makes no reference to Charlemagne having put the eagle on the top of the palace but he describes Lothar as the "king of the Carolingians" (*rex Karelingorum*) and protests (too much?) that Aachen

101 Richer, *Histories*, III, *c.* 71, ed. Lake, 116–117; Nelson, "Aachen," 220.

102 Adhemar manuscript (Rome, Biblioteca apostolica vaticana reg. Lat. 263) illustrated in K. Görich, "Kaiser Otto III. und Aachen," in *Krönungen*, ed. Hramp, I, 275–282, at 277 and cf. S.G. Nichols, *Romanesque Signs* (New Haven: Yale University Press, 1983) 79–80; Thietmar, Chronicon, III, *c.* 8, *Ottonian Germany*, trans. Warner, 133.

103 Riches, "Carolingian Capture," 200; Reuter, *Medieval Polities*, 96.

"had always belonged to our realm." Thietmar knew, however, that Charlemagne had built the great church at Aachen in which Otto I had been crowned and that the throne of Aachen was the "place of Otto's predecessors" and his reference to Aachen, in his account of 978, as "palace and royal seat" surely gestures towards this specific aura of Aachen. His silence on Charlemagne in 978 is eloquent. A set of contemporary annals from the eastern kingdom makes no reference to the eagle but says that Lothar went for Aachen "the seat of the kingdom of his ancestors"; Charlemagne's shadow looms up here too.[104]

Thirdly, the palace of Aachen exists in a landscape of palaces, as an active element in a topography of power, power that flows through a network of palaces. Richer tells us that what triggered Lothar's angry attack was Otto's cheek in flaunting his presence on the borders of Lothar's kingdom; the contemporary St. Gall annals also refer to this. To hold court in a palace with Aachen's resonance on a border was to make a declaration; as Rob Bartlett has said, to provision one's castle was not a defensive act, but to arm a warhead.[105] Lothar heard the defiance and responded. Otto also responded via palaces. To avenge the insult of fleeing from Aachen, which was not fortified, for Cologne, which was, Otto summoned his followers and moved west. Here, he devastated one palace, Attigny (*fiscum regium Atniacum diripit atque comburit*), skirted Reims and thus showed due reverence to Saint Remigius, as he did to Saint Medard at Soissons, before blasting another palace, Compiègne (*palatium Compendiense pene diripuit*). He also punished some of his trigger-happy warriors who attacked the abbey of Chelles, a former Carolingian house abbey.[106] This overwhelming attack was carefully targeted but these targets were empty: Lothar was not in any of these palaces but had fled to Étampes. The targets, however, retained high value and had been shrewdly chosen. Otto, in Richer's account, flaunts his Christian piety in sparing churches but palaces are fair game; such palaces included churches but the pattern of Otto's attack shows that palaces were a distinct category. Otto I had met enemies of Louis IV at Attigny in 940. Attigny had been in relative decline after the 920s as the western kings lost control of Lotharingia, but it was still important and Lothar's father Louis IV had regained control of the fiscal estates there in 951. Further, the church of St. Walburga in the palace was subject to Ste Marie and St. Corneille of Compiègne: a direct link

104 Thietmar, *Chronicon*, III, *c.* 8, and II, *c.* 1, *Ottonian Germany*, trans. Warner, 133, 90; *Annales Sangallenses maiores*, *sa.* 978, MGH SS I, 80; Riches, "Carolingian Capture," 194–195.

105 Richer, *Histories*, III, *c.* 68, ed. Lake, 110–111; *Annales Sangallenses maiores*, *s.a.* 978, 80; Riches, "Carolingian Capture," 197.

106 Richer, *Histories*, III, *c.* 74, ed. Lake, 122–123; B. Schneidmüller, *Karolingische Tradition und frühes französisches Königtum* (Wiesbaden: F. Steiner, 1979), 166.

between these two sites.[107] As for the palace of Compiègne, it was a particularly important resource for the west Frankish rulers: Charles the Simple had lavished resources on its fabric in explicit imitation of his west Frankish predecessors and its importance as a symbol of rule appears in the fact that rebels had targeted it in 945, again while the king was absent.[108]

Of course, much medieval warfare simply meant devastating one's enemy's lands but these sites were special: they undoubtedly constituted an economic resource but they also represented rule. Otto's attack was more systematic and intensive than Lothar's raid on Aachen, and both had different intentions, but both rulers exploited an existing system of palatial meaning, which included architecture and monumentality as well as memory and knowledge. It is no accident that, after Otto retreated, Lothar had his son anointed as king in (still scarred?) Compiègne in the summer of 979.[109] When Lothar and Otto met in 980 to arrange peace, they met on the frontiers of their kingdoms. But after this happy encounter, Otto proceeded to Aachen and ostentatiously stayed there for at least a fortnight.[110] Aachen provided the backdrop for this episode's start and finish. Lothar's attack on Otto there was not an attempt to conquer Lotharingia or to lay permanent claim to Aachen; expelling Otto and temporarily filling his place was enough. This was a real and public loss of face; Otto's attack on the western palaces was a deliberate response that showed that they were not empty when their ruler was absent. The fortnight at Aachen closed the circle for Otto, as the 979 ceremonies at Compiègne did for Lothar.

A palace with an absent ruler could be made to speak, but it did not always automatically reproduce its master's voice. As we have seen, rulers reacted badly to intrusions on their palaces. One of Charles the Bald's charges against the rebellious archbishop of Sens in 858–859 was that he had celebrated mass in the king's palace; admittedly, a king had been present but it was Charles'

107 J. Barbier, "Palais et fisc à l'époque carolingienne: Attigny," *Bibliothèque de l'école des chartes* 142 (1980), 133–162; and see her entry "Attigny" in her forthcoming *Dictionnaire du fisc et des palais*; I am grateful to Josiane Barbier for sending me this.

108 Richer, *Histories*, II, *c.* 43, 260–261, and note the references to insignia (and hunting dogs!) being captured.

109 G. Koziol, "A Father, his Son, Memory and Hope. The Joint Diploma of Lothar and Louis V (Pentecost Monday, 979) and the Limits of Performativity," in *Ritual, Inszenierung and Performanz vom Mittelalter bis zur Neuzeit*, ed. J. Martschukat and S. Patzold (Cologne: Böhlau, 2003), 83–103, at 90–91.

110 Richer, *Histories*, III, *cc.* 80–81, ed. Lake, 134–135; see Otto II's diplomata nos 217, 219, 220 in *Die Urkunden Otto des II.*, ed. T. Sickel, MGH Diplomata Regum et Imperatorum Germaniae II (Hannover, 1888).

brother Louis, who was invading the kingdom.[111] Similarly, in 972 Otto I was furious at the news that Duke Hermann Billung had made a flamboyantly ceremonial entry into Magdeburg while he, the ruler, was away in Italy. The details and significance of Hermann's entry are not entirely clear (and may not have been entirely clear to contemporaries) but he certainly was trying to broadcast a message to an important audience and it is significant that he chose this means to do so. Some important palace sites in the Ottonian realm were understood by contemporaries as places of evil reputation where conspiracies against kings could be formed; this is true of Saalfeld and Breisach. This tells us something about the structures of Ottonian rule (polycentric, itinerant, absent) but also highlights something about Ottonian political culture more generally, namely its collective character. With rulers often very distant, e.g., in Italy, magnates continued to gather on their own in palaces such as Werla; these were not conspiracies against the king but meetings to hear the king's will by letter or indeed to select a new king on the death of Otto III in 1002.[112] But precisely because such sites were often on good communication networks and existed in imagination and practice as places for important gatherings they could be used against kings. Frankfurt and Fritzlar served as meeting points for assemblies of magnates plotting to rebel against Henry IV and Henry V *c.* 1100. Chris Wickham's remarks on assemblies are relevant to such palaces here: "[assemblies were not] an autonomous resource for kings if their relevance faded for other reasons; … Assemblies did not operate as an independent causal element for political unity."[113] From this angle, palaces appear as a network of diffuse power rather than as a vehicle that carries power from a single source.

There is much more to be said on palaces as sites for the exercise of power and authority, e.g., in the administering of justice and punishment. And of course "the palace" as term for the site of earthly rule could appear in opposition to spiritual claims. In his *Confessions*, Augustine told a story that turned on the contrast between being prominent in the palace as a friend of the emperor and being a friend of God.[114] The fact that palaces contained religious

111 Airlie, "Not Rendering "unto Caesar"," 496.

112 S. Airlie, "Talking Heads: Assemblies in Early Medieval Germany," in *Political Assemblies in the Earlier Middle Ages*, ed. P.S. Barnwell and M. Mostert (Turnhout: Brepols, 2003), 29–46.

113 E. Orth, "Frankfurt," in *Die Deutschen Königspfalzen*, 1: *Hessen*, 328–329, 340; M. Gockel, "Fritzlar," in ibid., 479, 489–490, 507; C. Wickham, *Problems in doing Comparative History. Reuter Lecture 2004* (Southampton: University of Southampton, 2005), 22.

114 Augustine, *Confessionum Libri XII*, VIII.6 (14), (15), ed. L. Verheijen, *Corpus Christianorum Series Latina* 27 (Turnhout: Brepols, 1981), 121–123; J.J. O'Donnell, *Augustine. Confessions*, 3 vols (Oxford: Oxford University Press, 1992), III, 38–41.

buildings and were themselves sometimes understood as the sacred palace should not obscure this tension. Bishops in trouble with Carolingian kings contrasted the sinister power of the palace with the authority of duly constituted synods, etc., and there was a long pre-history to such a contrast. Such views do not point to Church-state conflict, but they do point to worries about the type of power that the palace, as a term, represented. And actual palaces could be a real site for this kind of worrying power and attendant tensions. When the ninth-century bishop of Laon complained that his men had been forcibly detained in the palace, I think that he meant just that.[115] But all this is a potentially large topic and I cannot pursue it here (though I hope to do so elsewhere).

4 Concluding Thoughts

Some final points. Palaces have a particular relationship to texts. If the court of the ninth-century Carolingian realm was a social as much as a physical space then it is logical to argue, as Nelson has done, that many texts are court texts, even if they were not written at court. This may be particularly true of historical writing, though not only true of that. But such a view does make palaces less distinctive, or more problematical in their relation to texts. And how would we characterise Al-Tabari? Hugh Kennedy describes him as "working mostly in Baghdad" but goes on to say that "he was not a court historian."[116] It may be that we take a narrow view of palace texts; we tend to concentrate on texts that describe the workings of the palace officials, etc. Hence the historiographical prominence of *De Ceremoniis*, Hincmar's *De ordine palatii*, etc. But since palaces were complexes of buildings and institutions within an overarching institution, and since they were not total institutions, for all that they were centres of power, we should look to see if palaces could produce a diversity of texts. Some would of course be administrative, etc. Who produced them? Staff at the palaces who remained even when the ruler was absent? We can see this at Constantinople and perhaps we can see it in Charlemagne's palaces if Rosamond McKiterrick is right about the drawing up of royal diplomata. And of course, while diplomata issued in one palace could refer to another and thus transmit images of both to their recipients, some diplomata conferring

115 Airlie, "Not Rendering "unto Caesar"," 496–550.

116 J.L. Nelson, "History-Writing at the Courts of Louis the Pious and Charles the Bald," in *Historiographie im frühen Mittelalter*, ed. A. Scharer and G. Scheibelreiter (Vienna: Oldenbourg, 1994), 435–442, at 438–439, and reprinted in Nelson, *Rulers and Ruling Families*; Kennedy, *When Baghdad Ruled*, xx–xxi.

benefits on, e.g., Aachen, may have been drawn up by the recipients of these palace sites, and so reflect very particular views of their status.[117] One Ottonian diploma actually lets us see what a contemporary thought a special site looked like in the little sketch of Quedlinburg to be found on Otto I's 956 grant.[118] And what about archives? It is easy to be impressed by the scale of archives at Constantinople (under the Hippodrome) but they were not always in good condition, and what about Carolingian and Ottonian palace archives? Such questions are hard to answer for specific palaces but they are worth posing because they point to larger systems and cultures behind archives, but they also remind us that archives had to be somewhere.

But such questions stem from assumptions about palaces as governmental centres. Not all texts produced in palaces were of that sort. If Quedlinburg can be counted as an Ottonian palace, we can read a remarkable text that was written there in the early eleventh century. This is the *Annals of Quedlinburg*, splendidly edited by Martina Giese. This text stems from the church of St. Servatius, founded by and for the women of the Ottonian family and other aristocratic women. But it is concerned with much more than them and their church. It certainly glorifies them, their church (*metropolis*) and the royal dynasty but it also reveals that there was no single entity that we can label as Quedlinburg. There was no one story of that site on that site.[119] Palaces had many facets; they were not only sites of the court. If they ultimately served one master, they served many purposes. That is what made, and makes, them so useful.[120]

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117 Zotz, "Die Gegenwart," 360–362.

118 Reproduction in *Otto der Grosse*, ed. Puhle, II, 116.

119 *Annales Quedlinburgenses*, ed. Giese; F. Lifshitz, review online in *The Medieval Review* 06 January 2003; I aim to expand these points elsewhere.

120 I am extremely grateful to the "Diverging paths" group for a flow of exceptionally stimulating ideas, encouragement and criticism over the course of our project; I am also grateful to Colette Bowie for helpful editorial advice and to Ian Wood for many valuable suggestions.

CHAPTER 14

Palaces, Itineraries and Political Order in the Post-Carolingian Kingdoms

Simon MacLean

1 Introduction

In the middle of the 880s Notker, a monk from St Gall in what is now Switzerland, wrote a highly anecdotal and mythologising biography of Charlemagne (768–814), several pages of which are devoted to descriptions of the emperor's reception of foreign embassies.[1] These stories depicted the fear and respect supposedly accorded to Charlemagne by Byzantine and "Persian" (meaning ʿAbbāsid) legates who shivered before the great Frankish king and showered him with extravagant presents: "it seemed as if the East had been left bare so that the West might be filled," as Notker put it.[2] The king's effortless superiority to his eastern counterparts plays out in the text through a number of sharpened motifs, including the etiquette of the hunt in addition to the formal exchange of gifts and the terrifying experience of the royal presence. But it is also noticeable that these encounters are projected by their author into the solid architectural setting of the great Carolingian palace at Aachen. The Byzantine envoys are led through a series of rooms in which they repeatedly mistake palace officials for the emperor before finally collapsing in awe before the glory of the real thing, standing before an open window at the heart of the complex.[3] For the ʿAbbāsid embassy, meanwhile, the sickening realisation of Frankish superiority only hits home after they ascend the palace *solarium* from which they are able to look down upon the king's enormous entourage.[4]

1 Notker, *Gesta Karoli*, 2.6-9, ed. H. Haefele, MGH SRG New Series (Berlin: Weidmann, 1959), 53–65.

2 Notker, *Gesta Karoli*, 2.8, ed. Haefele, 59, trans. D. Ganz, *Two Lives of Charlemagne* (London and New York: Penguin, 2008), 94.

3 Further on Notker's depictions of palatial architecture see S. Airlie, "The Palace of Memory: The Carolingian Court as Political Centre," in *Courts and Regions in Medieval Europe,* ed. S.R. Jones, R. Marks and A.J. Minnis (York: York Medieval Press, 2000), 1–20, at 4–5.

4 On the ideological significance of the solarium see M. de Jong, "Charlemagne's Balcony: The *Solarium* in Ninth-Century Narratives," in *The Long Morning of Medieval Europe*, ed. J.R. Davis and M. McCormick (Aldershot: Ashgate, 2008), 277–289.

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The palace here was no mere backdrop but played an active role in the narrative. The monk of St Gall's imagining of these encounters therefore serves to illustrate the significance of the *palatium* as a central symbol of Carolingian royal power writ large, for ideological statements about which it provided the essential setting.

Notker's unlikely depictions of Greeks and "Persians" represented a somewhat provincial and orientalising strand in the Western imagination, and in view of this it is perhaps ironic that his description of Charlemagne's palace (linked sequences of spaces used to control access to the ruler and emphasise his separateness) recalls less the open spaces of the real Aachen than the more intricate and intimidating layouts of the palace in Constantinople or ʿAbbāsid centres like Baghdad or Ukhaydin.[5] But the concept of the palace as a metonym for royal or imperial power was not confined to the West. For example, the ʿAbbāsid historian Ṭabarī (an exact contemporary of Notker's) collapsed his explanation of the waning of Sasanian power in the seventh century into an anecdote about the physical disintegration of Khusraw II's royal palace.[6] The ubiquity of the royal palace as a political symbol as well as a physical structure, in the imagination as well as on the ground, is what makes it a useful "clue" for doing comparative history. As a specific category which overlaps different polities, it provides a hinge via which to consider questions of similarity and difference.[7]

I will attempt to return to such broader comparisons towards the end of this article, but my main aim is to discuss the representation of the palace as a tool for calibrating political change within the Frankish world, by comparing the ninth century with the tenth. The decades after the death of the last legitimate Carolingian emperor Charles III "the Fat" in 888 represented a moment of dramatic structural change in the Frankish world as the imperial landscape of the

5 On these see e.g. R. Hillenbrand, *Islamic Architecture: Form, Function and Meaning* (Edinburgh: Edinburgh University Press, 1994), 392–395; H. Kennedy, *The Court of the Caliphs* (London: Weidenfeld & Nicolson, 2004), 137–139; P. Magdalino, *Studies on the History and Topography of Byzantine Constantinople* (Aldershot: Ashgate, 2007). On Notker as orientaliser see C. Wickham, "Ninth-Century Byzantium through Western Eyes," in *Byzantium in the Ninth Century – Dead or Alive?* ed. L. Brubaker (Aldershot: Ashgate, 1998), 245–256, esp. 254–256.

6 *The History of Al-Tabari. Vol. v: The Sasanids, the Byzantines, the Lakhmids, and Yemen*, trans. C.E. Bosworth (Albany: SUNY Press, 1999), 332–335.

7 C. Wickham, *Problems in Doing Comparative History: The 2004 Reuter Lecture* (Southampton: University of Southampton, 2005), 10–15, for discussion of methodological issues and the concept of the "clue," which is in turn borrowed from C. Ginzburg, "Morelli, Freud and Sherlock Holmes," *History Workshop Journal* 9 (1980), 5–36.

ninth century disintegrated and re-formed into the post-Carolingian world of the tenth; a shift from a large hegemonic empire ruled by members of a single dynasty to a jigsaw of smaller kingdoms controlled by new, unrelated and mutually antagonistic royal families.[8] The change was noted by contemporaries such as Regino of Prüm, who wrote a famous description of these new rulers' inability to dominate each other, which "increased the discord among them" and "equipped them to destroy each other in the competition for power."[9]

Yet the transition from Carolingian to post-Carolingian remains under-analysed, and tends to be absorbed into grander models of historical development, in particular those associated with debates concerning medieval *Staatlichkeit* ("state-ness") and the "feudal revolution" of the year 1000.[10] These ways of framing the transition from the ninth-century world to that of the tenth can be rather polarising: 888 tends to appear in these debates either as a major turning-point (marking the end of Carolingian institutions and the inauguration of a new age of stateless, illiterate politics) or as a mere ripple barely disturbing the surface of deep continuities which persisted to the millennium or even beyond. But recent research has highlighted the ambiguities of the transition. On the one hand we see, *c.* 900, kings who were structurally weaker than their predecessors, who hardly ever legislated, who were often not succeeded by their sons, and whose deeds went largely unchronicled thanks to the sudden demise of a long and rich tradition of contemporary history which revolved around the deeds of rulers and thus articulated the thought-world of

8 On this shift and its significance see above all S. Airlie "Les élites en 888 et après, ou comment pense-t-on la crise carolingienne?" in *Les Elites au Haut Moyen Age. Crises et Renouvellements*, ed. F. Bougard, L. Feller and R. Le Jan (Turnhout: Brepols, 2006), 425–437; S. Airlie, "Sad Stories of the Death of Kings: Narrative Patterns and Structures of Authority in Regino of Prüm's Chronicon," in *Narrative and History in the Early Medieval West*, ed. E.M. Tyler and R. Balzaretti (Turnhout: Brepols, 2006), 105–131. Following Airlie, I use "post-Carolingian" to refer to the period after the end of Carolingian hegemony in 888, even though some kings of this era were from the Carolingian family.

9 Regino, *Chronicle*, *s.a.* 888, *Reginonis abbatis Prumiensis Chronicon cum continuatione Treverensi*, ed. F. Kurze, MGH SRG (Hanover: Hahn, 1890), 129.

10 For the former see now *Der frühmittelalterliche Staat – Europäische Perspektiven*, ed. W. Pohl and V. Wieser (Vienna: Austrian Academy of Sciences, 2009); and for references on the latter see S. MacLean, "Apocalypse and Revolution: Europe around the Year 1000," *Early Medieval Europe 15* (2007), 86–106. On the year 900 as a turning point, see R. Le Jan, "Le royaume franc vers 900: un pouvoir en mutation?" in *Les Fondations scandinaves en Occident et les débuts du duché de Normandie*, ed. P. Bauduin (Publications du CRAHM: Caen, 2005), 83–95.

Carolingian politics; but on the other we see an increase in the consumption and adaptation of eighth- and ninth-century law (secular and ecclesiastical) and the reification of Carolingian definitions of office and property.[11] The disintegration of the Carolingian Empire, in other words, paradoxically coincided with the crystallisation of some of the pillars of Carolingian political order.[12]

Neither languid continuity nor rapid change therefore fully captures the messy implications of the Empire's end. The emergence of a new political order under the neo-Carolingian hegemony of the Ottonians from the middle of the tenth century is well appreciated, but the indistinct texture of the in-between period *c.* 888–*c.* 950 has not yet been fully described. What did the same-but-different post-Carolingian kingdoms owe to their predecessors, and how should we characterise that debt if not in simple terms of continuity or change? Here, palaces are useful. Because Carolingian palaces continued to exist and to matter in post-Carolingian Europe, fixed in the same locations while the world dissolved and reconstituted itself around them, we can use them as wormholes taking us back and forth between the parallel universes of the ninth and tenth centuries.

2 The Fate of the Carolingian *Palatium*

My interest is more in representations than architecture, and my starting point is a straightforward question about terminology: what happened to the concept of the *palatium* after the end of the Empire in 888? The term itself was commonplace in Carolingian documents as a descriptor for royal residences, but after 888 it appears in many fewer documents and in relation to many fewer sites. There are two reasons why this is significant. The first is that, as Notker's stories suggested, during the ninth century the term *palatium* was not

11 Law: W. Hartmann, *Kirche und Kirchenrecht um 900. Die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht* (Hanover: Hahnsche Buchhandlung, 2008). Office: S. Patzold, *Episcopus. Wissen über Bischöfe im Frankreich des späten 8. bis frühen 10. Jahrhunderts* (Ostfildern: Thorbecke, 2008). Property: C. West, *Reframing the Feudal Revolution: Political and Social Transformation between Marne and Moselle, c. 800–c. 1100* (Cambridge University Press: Cambridge, 2013). Legislation: S. MacLean, "Legislation and Politics in Late Carolingian Italy: The Ravenna Constitutions," *Early Medieval Europe* 18 (2010), 394–416. The last major Carolingian history, Regino's *Chronicle*, ends in 906.

12 For a stimulating discussion of this paradox see T. Riches, "The Changing Political Horizons of *gesta episcoporum* from the Ninth to the Eleventh Centuries," in *Patterns of Episcopal Power: Bishops in Tenth and Eleventh Century Western Europe*, ed. L. Körntgen and D. Waßenhoven (De Gruyter: Berlin, 2011), 51–62.

just a literal description of a type of building, but a core metaphor for Carolingian political order as a whole. Thus in the 830s, when a crisis at court provoked two major rebellions, critics of the regime attacked the sexual behaviour of the empress Judith as having created disorder in the Empire by polluting the "dignity" of the *palatium*; and it is no coincidence that the nearest thing we have to a treatise on Carolingian government is entitled *De ordine palatii* ("On the ordering of the palace").[13] These broader connotations were also in play when the word was attached to particular places in the enactment clauses of royal charters. These documents show a variety of terms for individual residences (e.g. "curtis," "villa") which were not deployed with absolute consistency. But it has been demonstrated by Thomas Zotz that such terminology was intended to bear political meaning and was not deployed indiscriminately or interchangeably – royal charters were public documents whose superficially dry rhetorical formulas preserve for us the fossils of performed political discourses.[14] Thus, for example, the court of Charles the Fat used the label *palatium* for only one residence in each of his kingdoms, self-consciously creating a different pattern from that found under his father and articulating a particular version of political geography.[15] *Palatium*, then, was not an objective descriptive term for a particular kind of royal site, but an attribute of a residence's political significance – its ascribed centrality – at any given moment. The term is useful because it is a grounded fragment of political discourse and thus, to borrow the words of Clifford Geertz, "mark[s] the center as center and give[s] what goes on there its aura of being not merely important but in some odd fashion connected with the way the world is built."[16]

13 J.L. Nelson, "Kingship and Empire," in *Carolingian Culture: Emulation and Innovation*, ed. R. McKitterick (Cambridge: Cambridge University Press, 1994), 52–87, at 59; Airlie, "Palace of Memory," 7–8; M. de Jong, *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814–840* (Cambridge: Cambridge University Press, 2009).

14 T. Zotz, "*Palatium publicum, nostrum, regium*. Bemerkungen zur Königspfalz in der Karolingerzeit," in *Die Pfalz. Probleme einer Begriffsgeschichte,* ed. F. Staab (Speyer: Verlag der Pfälzischen Gesellschaft zur Förderung der Wissenschaften, 1990), 71–101; T. Zotz, "*Palatium* et *curtis*. Aspects de la terminologie palatiale au Moyen Age," in *Palais royaux et princiers au Moyen Age*, ed. A. Renoux (Le Mans: Publications de l'Université du Maine, 1996), 7–15. On charters see C. Insley, "Where did all the Charters go? Anglo-Saxon Charters and the New Politics of the Eleventh Century," *Anglo-Norman Studies* 24 (2002), 109–128; G. Koziol, *The Politics of Memory and Identity in Carolingian Royal Diplomas: The West Frankish Kingdom (840–987)* (Turnhout: Brepols, 2012).

15 Elites accepted and adopted these definitions: For an example see Airlie, "Palace of Memory," 11.

16 C. Geertz, "Centers, Kings and Charisma: Reflections on the Symbolics of Power," in C. Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic

The second reason is methodological. Isolating a term like *palatium* as it is used in royal charters, and building arguments on that basis, of course does not provide a comprehensive picture of how "palaces" were used or perceived. But focusing on one class of source (which in any case provides the great majority of the evidence) is what permits comparison. And although we find fewer residences labelled as *palatium* in tenth-century royal charters than ninth-, we have an increasing number of such documents overall (at least for Germany and Italy). The formal structure and political idioms of these charters – a very conservative genre – were largely the same as in the Carolingian period, and the full semantic range of the *palatium* concept is visible in the tenth-century sources.[17] Nor, since the overall trend is so clear, can we dismiss the change in usage as a result of scribal whim, though that must have been a factor on occasion.[18] What is more, tenth-century narrative sources also tend to use the term *palatium* much less frequently than their Carolingian predecessors, and for the same small group of residences.[19] In other words, at the level of the big picture, the changing application of this terminology is a real change, not an effect of the evidence.

Considering the shifting use of this core political metaphor allows us to think about changing perceptions of the royal palace and of political geography, an aspect which has not been fully considered amidst the voluminous research on more practical aspects of the early medieval palace system.[20] This article is therefore more concerned with how contemporaries imagined and categorised certain royal sites than with their operation as political centres.

Books, 1983), 121–146, at 124. See also E. Shils, "Centre and Periphery," in *The Logic of Personal Knowledge: Essays Presented to Michael Polanyi* (London: Routledge & Kegan Paul, 1961), 117–130. On the term *palatium* as an aspect of political discourse in this context see T. Zotz, "Symbole der Königsmacht und Spiegel gesellschaftlicher Interaktion: zur Rede von *palatium* in den Urkunden der Ottonen," in *Retour aux sources. Textes, études et documents d'histoire offerts à Michel Parisse*, ed. S. Gouguenheim et al. (Paris: Picard Editions A. et J., 2004), 363–372, at 365.

17 As demonstrated by Zotz, "Symbole der Königsmacht."

18 F. Bougard, "Palais princiers, royaux et imperiaux de l'Italie carolingienne et ottonienne," in *Palais royaux*, ed. Renoux, 181–196, at 183–184, for one example of scribal preference apparently playing a part.

19 G. Streich, "*Palatium* als Ordnungsbegriff und Ehrentitel für die Urkundungsorte der deutschen Könige und Kaiser im Hochmittelalter," in *Die Pfalz*, ed. Staab, 103–129, at 107.

20 As pointed out by T. Reuter, "*Regemque, quem in Francia pene perdidit, in patria magnifice recepit*: Ottonian Ruler Representation in Synchronic and Diachronic Comparison," in T. Reuter, *Medieval Polities and Modern Mentalities*, ed. J.L. Nelson (Cambridge: Cambridge University Press, 2006), 127–146, at 130.

That said, we must keep in mind that the terminology of our sources is not separate from the social and political world to which it refers.[21] I propose therefore to interpret the labels attached to particular places as arguments about the political significance of those places – as constituting rather than simply revealing their character. The word *palatium* both clings to specific places and points outwards to contemporary conceptions of the realm – by following it like a trail of breadcrumbs through the forests of early tenth-century history, we can observe changes in the symbols of political order and perceptions of political geography.[22]

The dwindling attribution of the term *palatium* to royal residences is observable in all three of the major regions of the old Empire – west Francia, east Francia and Italy. In west Francia, the term, though common enough up until the end of the Empire, barely appears in royal charters between the reign of the first non-Carolingian king Odo (888–898) and that of the last genuinely powerful Carolingian Lothar (954–986). The one very striking exception is the reign of Charles III "the Simple" (or Straightforward) (899–923), during which the term was used frequently, even aggressively. Nine residences are labelled *palatium* by Charles's scribes, most frequently Compiègne, which is so called no fewer than twenty-one times. This serves to throw the general trend into even sharper focus: of Charles's four successors, only the chancery of his son Louis IV (936–954) used the label at all, and then only twice (once for Compiègne, once for Reims). In Italy, the term went from being commonly used under Lothar (840–855) and Louis II (855–875), to being extremely scarce during the first half of the tenth century, and applied to a much restricted group of residences – for about twenty years after 885, not even the main royal centre of Pavia was distinguished with the category of *palatium*.[23] And in the eastern kingdom, ruled from 919 by the Ottonian family, palatial status was reserved above all for key sites in the far west of the realm, that is Lotharingia, Alsace and the middle Rhine valley. By the end of the tenth century, only Aachen and Ingelheim had been given the title with anything approaching

21 M. Innes, "People, Places and Power in the Carolingian World: A Microcosm," in *Topographies of Power in the Early Middle Ages*, ed. M. de Jong and F. Theuws (Leiden: Brill, 2001), 397–437, at 398–399.

22 On the link between space and power see M. Mann, *The Sources of Social Power. Vol. 1: A History of Power from the Beginning to ad 1760* (Cambridge: Cambridge University Press, 1986), 9.

23 The rise and fall of this vocabulary in Italy is comprehensively described by Bougard, "Palais princiers."

consistency, followed by Frankfurt, Cologne and Erstein – all five lie on or west of the Rhine.[24]

This pattern has been described before, but not fully explained. Zotz recognised this in an excellent discussion of the Ottonian evidence and convincingly argued that palatial vocabulary, redolent of Carolingian tradition, was deployed to enhance particular acts of royal self-representation.[25] But the pattern as a whole has generally been seen as the product of a long-term process by which royal office itself became institutionalised, or transpersonalised. The culmination of this process is held to be visible in Wipo's mid-eleventh century biography of the emperor Conrad II, which includes a famous account of the destruction of the royal palace at Pavia in 1024.[26] According to Wipo, the citizens responsible defended their actions by claiming that the fact they had acted after the death of Conrad's predecessor Henry II, but before the new ruler had been formally inaugurated, meant that there was no king and that the royal palace was at that point no more than a building. Conrad's counter-argument, that the kingdom persisted even after a king had died, and that its palaces were therefore permanently royal and public, is often considered to reveal a newly institutionalised conception of political power.[27] With Wipo's anecdote in mind, the relatively consistent tenth-century attribution of palatial status to centres like Aachen and Pavia has been interpreted as representing an early stage of the move towards transpersonalisation, reflecting a growing sense that particular sites had the character of permanent royal centres.[28]

But the arguments reportedly rehearsed by Conrad and the Pavians in 1024 were not necessarily all that new, and indeed seem to be anticipated in an

24 Streich, "*Palatium* als Ordnungsbegriff," 103–107. The exception was Magdeburg, on which see below.

25 Zotz, "Symbole der Königsmacht."

26 Wipo, *Gesta Chunoradi II*, c. 7, ed. H. Bresslau, MGH SRG (Hanover and Leipzig, 1915), 29–30.

27 H. Wolfram, *Conrad II, 990–1039: Emperor of Three Kingdoms*, trans. D. Kaiser (Philadelphia: University of Pennsylvania Press, 2006), 63–64. The classic statement is H. Beumann, "Zur Entwicklung transpersonaler Staatsvorstellungen," in *Vorträge und Forschungen* 3 (1956), 185–224.

28 See for example Streich, "*Palatium* als Ordnungsbegriff," 109; Zotz, "*Palatium publicum*," 86, 90–91, 99; T. Zotz, "Grundlagen, Grenzen und Probleme der Staatlichkeit im frühen Mittelalter. Zur Bedeutung und Funktion der Königspfalzen," in *Der frühmittelalterliche Staat*, ed. Pohl and Wieser, 515–520. For an acute critique of the prevailing interpretation of Wipo see W. Pohl, "Staat und Herrschaft im Frühmittelalter: Überlegungen zum Forschungsstand," in *Staat im frühen Mittelalter*, ed. S. Airlie, W. Pohl and H. Reimitz (Vienna: Austrian Academy of Sciences, 2006), 9–38, at 34.

equally well-known ninth-century text, a rebuke issued to King Louis the German by Archbishop Hincmar of Reims in 858. The thrust of Hincmar's put-down was that just because Louis, who had invaded the west Frankish kingdom, was staying in the royal residence of Attigny, that did not mean that he was in a royal palace – the *palatium* was a community of people and a political ideal, not a physical structure.[29] The position against which the archbishop implicitly argued (and which was presumably adhered to by Louis and his entourage) was that palaces like Attigny were inherently royal, and that their possession amounted to a claim to exercise legitimate royal power – a position not so different from that ascribed by Wipo to Conrad II almost two centuries later. Comparing Hincmar and Wipo therefore suggests that competing definitions of the palace and its relationship to the kingdom always co-existed, finding expression and meaning in particular political situations. This in turn calls into question the idea that the transpersonalisation of royal office, and of the palace, was a continuous and evolutionary process: the royalness of royal palaces was a recurring contemporary debate, not an independent variable which we can isolate and measure.[30] We need to look more closely at the tenth-century evidence and ask what was specific about the circumstances that produced it, rather than invoking the explanatory power of a spectral historical process.

Perhaps the most obvious, and important, point to be made about the pattern of the evidence is that almost all the sites which retained the label *palatium* in the first half of the tenth century were closely associated with the ninth-century Carolingian dynasty, and especially with those rulers whose legacy was most keenly felt in the successor kingdoms, namely Charlemagne, Louis the German and Charles the Bald (particularly associated with Aachen, Frankfurt and Compiègne respectively).[31] As Zotz persuasively argued, the attribution of the tag to these places can be read on one level as a

29 *Die Konzilien der karolingischen Teilreiche 843–859*, ed. W. Hartmann, MGH Concilia III (Hanover: Hahnsche Buchhandlung, 1984), no. 41, *c.* 5, 412. Discussion: J. Fried, "Der karolingische Herrschaftsverband im 9. Jh. zwischen 'Kirche' und 'Königshaus'," *Historische Zeitschrift* 235 (1982), 1–43, esp. 39–41; Zotz, "*Palatium* et *curtis*," 7–8.

30 On the rhetoric of royalness that surrounded palatial space see also Stuart Airlie's article in this volume, above.

31 On these rulers' associations with such palaces, denoted not least by their classification as *palatia* in royal charters, see C. Brühl, *Fodrum, gistum, servitium regis: Studien zu den wirtschaftlichen Grundlagen des Königtums im Frankenreich und in den fränkischen Nachfolgestaaten Deutschland, Frankreich und Italien vom 6. bis zur Mitte des 14. Jahrhunderts* (Cologne and Graz: Böhlau Verlag, 1968), 40–42; Zotz, "*Palatium publicum*," 91–95.

straightforward attempt by new dynasties like the Ottonians to legitimise themselves through appeal to the Carolingian past. But despite the regularly expressed notion that the hallmark of the Ottonian age was the dynasty's inclination for building "new beginnings on Carolingian traditions," the Frankish past was not a straightforward resource for the Ottonian kings.[32] The dynasty did not, for instance, directly imitate Carolingian royal titulature, and their origins in Saxony, on the far eastern frontier of the old Empire, meant that their familiarity with Frankish kingship and their awareness of the ninth-century past may have been somewhat vague, and at any rate less clear than our own.[33]

What is more, the relevance of Carolingian political geography to all the rulers of this generation was complicated by a history of rupture and discontinuity. The really iconic Carolingian palaces of the ninth century (those most often labelled *palatium* in the tenth) lay in royal heartlands that the post-888 kings could not control, and these residences thus lost their effective political centrality. This is perhaps easiest to see in west Francia, where the first post-Carolingian king Odo sought to rule in the fashion of his predecessors, as advertised by his coronation at Charles the Bald's palace of Compiègne in 888. Thereafter, however, he found his itinerary restricted to points further west, nearer the heartlands of his family's own power in Neustria – his favoured sites included Paris, Orléans and Chartres, none of which had been significant royal centres in the heyday of the Carolingians.[34] This disjuncture between political tradition and political geography in Odo's reign contrasts with the promiscuous use of the term *palatium* for classical Carolingian centres, particularly Compiègne, in the reign of his rival and successor Charles the Simple (or Straightforward) – Charles, who was a Carolingian, had to assert continuity with his family's past so overtly precisely because it had become obvious that this continuity had been broken.[35] Charles's successors Raoul and Louis IV

32 Quote from Zotz, "Symbole der Königsmacht," 372.

33 Titles: E. Müller-Mertens, "Frankenreich oder Nicht-Frankenreich? Überlegungen zum Reich der Ottonen anhand des Herrschertitels und der politischen Struktur des Reiches," in *Beiträge zur mittelalterlichen Reichs- und Nationsbildung in Deutschland und Frankreich,* ed. C. Brühl and B. Schneidmüller (Munich: Oldenbourg, 1997), 45–52. Knowledge of the past: Reuter, "*Regemque*," 135–137; T. Reuter, "The Ottonians and Carolingian Tradition," in Reuter, *Medieval Polities*, 268–283.

34 The evidence is summarised by R.H. Bautier, "Les itineraires des souverains et les palais royaux en France occidentale de 877 à 936," in *Palais royaux*, ed. Renoux, 99–110.

35 On Charles's ostentatious appropriation of Carolingian tradition see B. Schneidmüller, *Karolingische Tradition und frühes französisches Königtum: Untersuchungen zur Herrschaftslegitimation der westfränkisch-französischen Monarchie im 10. Jahrhundert* (Wiesbaden: Franz Steiner Verlag, 1979); Koziol, *Politics of Memory*, 459–555.

(whose power bases lay in Burgundy and Laon respectively) were, like Odo, unable to lay claim to the residences east of the Seine that defined the old core of the west Frankish realm, and found themselves engaged in endless struggles for influence there with their powerful magnates. These observations could be broadly extended, with the necessary modifications, to east Francia and Italy.

To put it another way, the patterns of politics in the ninth century involved kings ruling from royal heartlands and struggling to keep control of their kingdoms' peripheries; while in the tenth, we see the dynamic inverted as new rulers from the edges of the old kingdoms (Saxony; Neustria and Burgundy; and in Italy Friuli and Spoleto) competed to regain control of the former Carolingian heartlands. The new dynasties could not, as is often stated, simply inherit Carolingian resources in these heartlands, for the notion of crown property was itself not clearly institutionalised. Instead, they needed to assert their claims to these resources and the territories in which they lay, and this gives us an alternative way to understand the use of the label *palatium* in this period – as representing an argument (performed live to local audiences and fossilised in our documents) that these residences, which were symbolically important but lay in territories on the fringes of rulers' power, were inherently royal and should thus be associated with the king, as it were *ex officio*. Behind them we can perhaps infer a position being taken about the inherent royalty of certain places not dissimilar to those we inferred in the minds of Louis the German in 858 and Conrad II in 1024, both of whom were at those moments attempting – like the early Ottonians – to take control of territories where they were unsure of recognition. In the context of a fluid and competitive dynastic situation these labels, and the political performances that produced them, can therefore be read as assertions of continuity and stability, rather than as evidence of continuity itself. Here, in other words, we might do better to think of institutionalisation as an argument – and as an unintended consequence of political insecurity – rather than a process.[36]

Another distinctive feature of the immediately post-Carolingian world is the tendency of royal palaces to pass into the hands of queens. Perhaps the best-known example of this is the Saxon royal centre at Magdeburg, Otto I's favourite residence, which was established on the dower property of his first wife Edith.[37] Already in 907 Charles the Simple had given to his wife Frederun

36 On institutionalisation as a by-product of social relations, rather than their goal, see Mann, *Sources of Social Power I*, 14–16, 34–40. On the link between charters and performances, see now Koziol, *Politics of Memory*.

37 *Die Urkunden Konrad I., Heinrich I. und Otto I.*, ed. T. Sickel, MGH Diplomata regum et imperatorum Germaniae 1 (Hanover: Hahn, 1879–1884), Otto I no. 14. Erstein had also been founded by a Carolingian queen and was thereafter associated with royal women.

two old Carolingian palaces, Ponthion and Corbeny, both referred to as *palatium* in his charters.[38] These seem later to have been held by some of Frederun's successors as queens, as were other *palatia* at Attigny, Douzy and Meersen.[39] We see a similar pattern south of the Alps: of the eight rural residences regarded as *palatia* in Italian royal charters of the ninth century, no fewer than five were in the hands of royal women by the middle of the tenth.[40] This is a little-noticed but distinctive phenomenon of the tenth century: ninth-century queens were never given palaces as dowers and were characterised as guardians of the *honestas* of the *palatium* in the figurative sense, not as actual proprietors of individual residences.[41] Part of the explanation for this shift is an attempt by weak tenth-century kings to incorporate their wives, who were often non-native, into the political life of their kingdoms by endowing (and empowering) them with resonant royal sites.[42] But it could also be seen as another strategy employed by rulers of this period to strengthen their grip on such sites and bring them into a more formal relationship with their dynasties: queens often held the same properties in sequence. The association of palaces with queens was legitimised by Carolingian discourse on royal women: *De ordine palatii*, for example, characterised the queen as responsible for the provisioning of the royal palace.[43] We might also see the trend as linked to the tenth-century emphasis on dynastic commemoration as a key function of royal women. Although such acts of *memoria* are usually associated with royal nunneries, Stuart Airlie has emphasised that early medieval palaces were also important sites of political memory.[44] Possession of these sites may thus have been considered a natural extension of queens' commemorative role.

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38 *Recueil des actes de Charles III le Simple, roi de France*, ed. P. Lauer (Paris: Académie des Inscriptions et Belles-Lettres, 1940), no. 56.

39 For references and discussion see S. MacLean, "Making a Difference in Tenth-Century Politics: King Athelstan's Sisters and Frankish Queenship," in *Frankland: The Franks and the World of the Early Middle Ages. Essays in Honour of Dame Jinty Nelson*, ed. P. Fouracre and D. Ganz (Manchester: Manchester University Press, 2008), 167–190, at 183.

40 The Italian evidence is gathered by Bougard, "Palais princiers," 190–194.

41 Above, n. 13.

42 This is the argument of MacLean, "Making a Difference," which draws on the insights of P. Stafford, "*Cherchez la femme*. Queens, Queens' Lands and Nunneries: Missing Links in the Foundation of Reading Abbey," *History* 85 (2000), 4–27.

43 Hincmar, *De ordine palatii*, ed. T. Gross and R. Schieffer, MGH Fontes (Hanover: Hahn, 1980), *c.* 22, 72–75.

44 Airlie, "Palace of Memory," 12–14. On Ottonian queens and commemoration see P. Corbet, *Les saints ottoniens: sainteté dynastique, sainteté royale et sainteté féminine autour de l'an mil* (Sigmaringen: J. Thorbecke, 1986).

Palaces were not the only sorts of site onto which value-judgements were projected in the tenth century. The other side of the coin can be seen in contemporary statements about the negative characteristics of certain locations: a well-known example is a reference to Saalfeld as a "place of evil counsel."[45] Perhaps a more intensely politicised sense of topography derived from the smaller stages on which tenth-century elite politics played out, and from the relatively restricted landownership of dynasties like the Ottonians compared to their predecessors. But more generally the reification of particular palaces as possessing "palatial" attributes, or as having particular associations with royal women, can be seen as complementary strategies in the new dynastic environment of post-Carolingian Europe in which power politics was no longer a matter of competition between members of a single royal family fighting over the distribution of land and seniority, but between a number of families who were competing to appropriate the very notion of royalty itself. And royalty, in this context, remained virtually synonymous with Carolingian royalty, which is the notion that these kings tried to instrumentalise through ostentatious appropriation of Carolingian centres at the very fingertips of their reach.

The limits to the ability of even the Ottonians to domesticate this notion is indicated by the history of Otto I's favourite palace at Magdeburg in Saxony. This was the only place not in the far west of his realm dignified regularly with the label *palatium*, but the designation did not stick and the transformation of Magdeburg into an archbishopric in 968 changed it into a completely different kind of centre. Although Magdeburg and its western counterpart Reims were in practice the key political centres of their respective kingdoms, their different histories and their ecclesiastical nature precluded lasting characterisations of them as *palatia*.[46] Otto certainly controlled Magdeburg, unlike the Carolingian residences in the far west of his kingdom, and classification of such personal sites as palaces was typical of the way that late Carolingian kings like Charles the Fat had defined their realms. But the impermanence of Magdeburg's status as a *palatium* suggests that its roots were not deep enough for it to be fully accepted as part of the "centre of the order of symbols, values and beliefs."[47] Recycling Carolingian palatial traditions was not a

45 Breisach had a similar reputation: Widukind of Corvey, *Rerum Gestarum Saxonicarum Libri Tres*, III, 9, ed. P. Hirsch, MGH SRG (Hanover: Hahn Verlag, 1935), 109; Adalbert, *s.a.* 953, *Continuatio Reginonis abbatis Prumiensis Chronicon*, ed. F. Kurze, MGH SRG (Hannover: Hahn, 1890), 167.

46 *Recueil des actes de Louis IV, roi de France* (*936–954*), ed. P. Lauer (Paris: Klincksieck, 1914), no. 42 features the only appearance of Reims as "palatium."

47 Shils, "Centre and Periphery," 117.

straightforward business for non-Carolingian kings, because such traditions were not simply found hanging in the air – they had to be located, and performed, in particular places.[48]

3 Aachen as a Place of Conflict

These arguments about the instrumentalisation of Carolingian discourses can be approached from another angle if we turn to look at the history of a single palace. The great palace of Aachen in northern Lotharingia is the best-documented of all Carolingian centres and its role has been intensively studied for the period *c.* 790–840, when it was the main residence of the emperors Charlemagne and Louis the Pious, and for the later tenth and eleventh centuries, when it was revived as an active political centre under Otto III and had its links to the royal chapel institutionalised.[49] But its position in the Frankish kingdoms between these two high points is less fully appreciated.[50] Historians tend to assume that Aachen had a more or less continuous history as a political centre which survived the collapse of the Empire and was effortlessly inherited by the Ottonians – a conclusion seemingly supported by the fact that Otto I was crowned king at Aachen in 936, observing, according to Widukind of Corvey, Frankish tradition.[51] Following the ground-breaking study of Otto's

48 By contrast, note the correlation of place, date, purpose and vocabulary in *Recueil des actes de Louis IV,* no. 4, which heralds Louis IV's renunciation of his protector Hugh the Great via pointed advertising of Carolingian traditions: promulgation on Christmas Day (the anniversary of Charlemagne's imperial coronation), at his father's great palace of Compiègne, which is give the attribute "palatium" (one of only two such uses in this king's charters).

49 For example: L. Falkenstein, *Karl der Grosse und die Entstehung des Aachener Marienstiftes* (Paderborn: Schöningh, 1981); L. Falkenstein, *Otto III. und Aachen* (Hanover: Hahn, 1998); J.L. Nelson, "Aachen as a Place of Power," in *Topographies of Power*, ed. de Jong and Theuws, 217–241; C. Bayer, "Die Aachener Marienkirche in der Diözese Lüttich: zu Funktionen, zur rechtlichen Stellung und zur Stiftsverfassung. Eine Skizze," in *Dombaumeistertagung*, ed. H. Maintz (Aachen: Thouet, 2011), 55–74. In the twelfth century Aachen was regarded as a coronation palace, and thus played a significant role in the conception of Hohenstaufen kingdom even though rulers rarely went there: C. Brühl, "Remarques sur les notions de 'capitale' et de 'residence' pendant le haut Moyen Age," *Journal des savants* 4 (1967), 193–215, at 208.

50 Though see K. Hauck, "Die Ottonen und Aachen, 876 bis 936," in *Karl der Große. Lebenswerk und Nachleben.* Vol. 4, ed. W. Braunfels and P.E. Schramm (Düsseldorf: Schwann, 1967), 39–53; and Falkenstein, *Otto III. und Aachen*, 2–17.

51 Widukind, *Rerum Gestarum Saxonicarum Libri Tres*, II,1, ed. Hirsch, 63–66.

itinerary by Eckhard Müller-Mertens, the palace is regarded as having been absorbed seamlessly into the political structures of the Ottonian polity as the focal point of one of the three royal heartlands of the tenth-century realm (along with southern Saxony and the middle Rhine valley).[52] Moreover, Aachen was the residence most often favoured with the title *palatium* in Ottonian charters. But we have already seen that the patterns of Carolingian geography were disrupted at the end of the ninth century – how can such discontinuities be incorporated into our understanding of the palace's history? First we will look briefly at how Aachen was thought about; and then how it was used.

The meaning of places is constructed not just through classification, but also by the stories told about them.[53] Such narratives as we have underline the sense that the late ninth century witnessed a rupture in Aachen's history of centrality, and that contemporaries recognised this rupture as such. The real turning point was a Viking raid in 881, in the course of which the attackers sacked and burned the great palace and (according to an annalist writing in Mainz) "used the king's chapel as a stable for their horses."[54] The significance of this attack should not be underestimated, for Aachen more or less drops out of our narrative sources after this point.[55] Contemporary interpretations of the attack seem to indicate a sense of finality. In describing the 881 raid, led by a warlord called Godafrid [III], the Mainz annalist may have been tacitly responding to a story in Einhard's *Life of Charlemagne* in which an earlier Godafrid [I] threatened to bring a large army to Aachen and destroy it.[56] Connoisseurs of Einhard, among whom we may number our annalist, could have read the reference to the stabling of enemy horses in Charlemagne's

52 E. Müller-Mertens, *Die Reichsstruktur im Spiegel der Herrschaftspraxis Ottos des Großen* (Berlin: Akademie-Verlag, 1980). For useful summaries of this work's main points see J. Bernhardt, *Itinerant Kingship and Royal Monasteries in Early Medieval Germany, c. 936–1075* (Cambridge: Cambridge University Press, 1993), 60–70; E. Müller-Mertens, "Verfassung des Reiches, Reichsstruktur und Herrschaftspraxis unter Otto dem Groβen," in *Otto der Grosse: Magdeburg und Europa*, ed. M. Pühle (Mainz: Philipp von Zabern, 2001), 189–198.

53 P. Smith, "The Elementary Forms of Place and their Transformations: A Durkheimian Model," *Qualitative Sociology* 22 (1999), 13–36, esp. 15–16; T. Gieryn, "A Space for Place in Sociology," *Annual Review of Sociology* 26 (2000), 463–496, esp. 465. On the role of texts and practices in constituting the meanings of places see also the article by Nadia El Cheikh in this volume, below.

54 *Annales Fuldenses, s.a.* 881, ed. F. Kurze, MGH SRG (Hanover: Hahn, 1891), 97.

55 Nelson, "Aachen as a Place of Power," 234.

56 Einhard, *Vita Karoli Magni, c.* 14, ed. O. Holder-Egger, MGH SRG (Hanover: Hahn, 1911), 17.

chapel as a belated consummation of this threat.[57] Certainly, there are hints that this was the way it was understood by Notker of St Gall, who collapsed together details from the careers of the two Godafrids to suggest that the same man who had boasted about destroying Aachen had also been active in the vicinity of the palace, even though the historical Godafrid I had never been near the region.[58] Elsewhere in his work Notker hangs his sense of foreboding about the future of the Carolingian dynasty on a portentous comment about a wondrous Byzantine organ possessed by Charlemagne and widely regarded as a symbol of his prestige: "I must not, here and now, speak of where it was set up, and how long it lasted, and how it perished at the same time as other losses."[59] This veiled reference to the events of 881 captures the finality associated by contemporaries with the sack of Aachen.

Yet the moment when Aachen's political centrality was felt to have been brought to a violent end was precisely the same moment when its status as a numinous symbol for political order began to inflate. Late ninth-century accounts of Charlemagne's life project an aura not just around the great emperor's person, but around his most famous palace. Aachen appears much more often, and with more florid adjectives, in the Saxon Poet's early 890s rewriting of Einhard's text than in the original.[60] Notker's numerous Aachen stories likewise embellished the mystery and significance of the palace well beyond the descriptions in Einhard, also his main source, and even suggested that the palace's meaning had changed. Einhard had claimed that Charlemagne chose the site of Aachen because of its natural springs, and said that he liked to bathe in the company of numerous friends and courtiers; this is an image of *Romanitas*, recalling not only Suetonius's *Lives of the Twelve Caesars* but also Theophanes's account of the habits of the eighth-century Byzantine emperor Philippikos in the great imperial capital of Constantinople.[61] But in Notker's hands the baths were transformed from a microcosm of Late Antique

57 *Annales Fuldenses*, *s.a.* 874, ed. Kurze, 82 suggests that the Mainz author was familiar with Einhard's works.

58 Notker, *Gesta Karoli*, 2.13, ed. Haefele, 75–76; S. MacLean, *Kingship and Politics in the Late Ninth Century: Charles the Fat and the End of the Carolingian Empire* (Cambridge: Cambridge University Press, 2003), 203, 213–215.

59 Notker, *Gesta Karoli*, 2.7, ed. Haefele, 58, trans. Ganz, *Two Lives*, p. 92.

60 Poeta Saxo, *Annalium de gestis Caroli Magni Imperatoris Libri Quinque*, ed. P. von Winterfeld, MGH Poetae 4.1 (Berlin: Weidmann, 1909), 29, 36–40, 43–44, 47, 49–50, 55, 63, 65, 69–70.

61 Einhard, *Vita Karoli*, *c.* 22, ed. Holder-Egger, 27; *The Chronicle of Theophanes Confessor*, *s.a.* 713, trans. C. Mango and R. Scott, with G. Greatrex (Oxford: Oxford University Press, 1997), 533: "… the emperor decided to make on the Saturday of Pentecost an entry on horseback,

civilisation into a potent universal religious symbol, likened to baptismal waters in which even the Devil himself could be bested by righteous Carolingian rulers.[62]

This Aachen of the imagination (Notker confessed he had never been there) was a powerful symbol despite, or perhaps because of, the fact that it was no longer a living seat of power. No king visited Charlemagne's old palace between 877 and 900, and there are only four recorded visits in the three decades after that.[63] Kings were not infrequently in the area, but usually preferred to stay at Herstal or Cologne rather than Aachen. The reason for this seems to have been that it lay on the very fringes or indeed beyond the control of these rulers. The limits of Charles the Simple's influence, for example, are clear from an incident in 920 when the Aachen treasury was emptied out by local aristocrats opposing the king in a struggle for control of the bishopric of Liège.[64]

Rulers instead sought to associate themselves with these narratives remotely. Thus in early 877, the same year in which the last ruling king for a generation visited Aachen, Charles the Bald unveiled his new chapel at Compiègne which was explicitly intended to recall Charlemagne's great residence.[65] Charles the Fat's palace at Sélestat in Alsace, which probably dates from the early 880s, also featured architectural quotations of Aachen.[66] This Charles's credentials as a connoisseur of Aachen's meanings are clear: in 881 after the Viking raid he had the palace's relic collection brought to his court in Alemannia; and he was also the intended recipient of the Charlemagne biography by Notker, whom he knew personally and whose tastes and interests the monk had in mind when he wrote.[67] It is also interesting that Charles's only charter in favour of the royal chapel at Aachen, which probably dates from 884, was issued while he was

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to bathe in the public baths of Zeuxippos and to lunch with citizens of ancient lineage." On the relationship to Suetonius: Nelson, "Aachen as a Place of Power," 236.

62 Notker, *Gesta Karoli*, 2.15, ed. Haefele, 80; Nelson, "Aachen as a Place of Power," 234–236.

63 Falkenstein, *Otto III. und Aachen*, 2–21.

64 *Karoli III. capitula de Tungrensi episcopatu proposita*, ed. A. Boretius and V. Krause, MGH Capitularia II (Hanover, 1897), no. 290, 380.

65 *Recueil des actes de Charles II le Chauve, roi de France*, ed. G. Tessier et al. (Paris: Imprimérie Nationale, 1943–1955), no. 425; J.L. Nelson, *Charles the Bald* (London: Longman, 1992), 247–248; Airlie, "Palace of Memory," 14–16.

66 T. Zotz, "Carolingian Tradition and Ottonian-Salian Innovation: Comparative Perspectives on Palatine Policy in the Empire," in *Kings and Kingship in Medieval Europe*, ed. A.J. Duggan (London: King´s College London, 1993), 69–100.

67 *Die Urkunden Karls III*, ed. P. Kehr, MGH Diplomata Regum Germaniae ex Stirpe Karolinorum 2 (Berlin: Weidmann, 1937), no. 64; MacLean, *Kingship and Politics*, 157–158, 199–229.

resident at Regensburg, a palace with a chapel modelled on Aachen's.[68] Similarly, Charles the Simple's only visit to Aachen, in 917, is known from the elaborately-worded gifts he made on that occasion to the chapel at his own favoured palace of Compiègne, itself (as already noted) a kind of copy of Aachen.[69] This sort of "inter-palace dialogue" underlines the way that kings of this period tried to conjure a grid of royal centres that covered their kingdoms in an imaginary network.[70] Aachen was the generator at its heart, its charisma drawn on through invocation or association even though it was rarely visited, far less used as a seat of government.

The fact that Aachen in the decades around 900 was simultaneously central (symbolically) and peripheral (practically) means that it was not a straightforward matter for the Ottonians to assume its control. The break in its history in the late ninth century, which was perceived by contemporaries, meant that it was not simply sitting there waiting to be inherited by the next royal dynasty that managed to establish itself, and its place in the political geography of post-Carolingian Europe was necessarily altered. Although the palace is generally seen as one of the three main centres of the early Ottonian Reich, in fact the first two Saxon kings went there comparatively rarely: Henry I and Otto I visited Aachen only nine times in total between 925 and 973, with the average time spent there on each occasion being surprisingly short (barely more than in the areas categorised by Müller-Mertens as "transit zones").[71] Nor were these visits regularly spaced: six of the nine visits took place in the period 944–951, with the others falling in 930, 936 and 966.[72] What is more, when Otto was there he only issued charters for Lotharingian recipients, which suggests that in his reign

68 *Die Urkunden Karls III*, no. 109. On the same visit he also had an eternal flame lit for his own soul in the Regensburg chapel; no. 107. Both chapels were dedicated to the Mother of God.

69 *Recueil des actes de Charles III le Simple*, nos 90–91. The heavily dynastic narrative of these charters (on which see Airlie, "Palace of Memory," 16–17) is notable. *Die Urkunden Arnolfs*, ed. P. Kehr, MGH Diplomata Regum Germaniae ex Stirpe Karolinorum 3 (Berlin, 1940), no. 31, Arnulf's only charter for Aachen, was issued from Frankfurt ("palatium regale"). *Die Urkunden Lothars I. und Lothars II.*, ed. T. Schieffer, MGH Diplomata Karolinorum 3 (Berlin and Zurich, 1966), Lothar I no. 136, also reminisces about Charlemagne's founding of Aachen.

70 Quotation ("Dialog zwischen zwei Pfalzorten") from Zotz, "Symbole der Königsmacht," 368, where Ottonian examples are discussed.

71 The data is mapped and discussed by Müller-Mertens, *Reichsstruktur*; Müller-Mertens, "Verfassung des Reiches," 194; Streich, "*Palatium* als Ordnungsbegriff," 104.

72 Falkenstein, *Otto III. und Aachen*, 27–29 lays out the evidence.

Aachen was closely linked to regulation of the region in which it lay rather than being a nodal point from which the whole kingdom could be ruled.[73]

Far from demonstrating "how firmly Lotharingia was integrated into the east Frankish realm under Otto I," I think the explanation for this pattern of visits to Aachen lies in the problems he had in asserting his control of the region in the face of opposition from rivals to the west.[74] The timing of the first two visits suggests that they were opportunistic attempts to take advantage of rivals' momentary weakness: Henry I formally gained control of Aachen in 925 but did not venture there until shortly after Charles the Simple's death in captivity in late 929; while Otto's choice of Aachen for his coronation in 936 is perhaps best seen as a response to the coronation of Charles's young son Louis IV in west Francia only weeks earlier.[75] Charters issued around the time of these two visits suggest an attempt by the east Frankish kings to appropriate the essence of Aachen by inserting themselves rhetorically into an unbroken tradition of Frankish kingship – but we may wonder whether this reflected a desire to emulate Charlemagne directly so much as a competitive reaction to the promiscuous discourse of Carolingianness that had been deployed by Charles the Simple against his non-Carolingian rivals, and which Louis showed signs of resuming.[76] Louis openly maintained a claim to Lotharingia, which had been part of his father's kingdom, and even invaded in 939–940. The west Frankish kings never definitively dropped these claims, though they were put on the back-burner after 946 when Louis became indebted to Otto for rescuing him from his internal enemies. It is surely no coincidence that the major concentration of Ottonian visits to Aachen fell in the years either side of 950, precisely when Louis was at his weakest and most beholden to Otto. These circumstances led to an intensification of contact between the kingdoms in the later 940s, and indeed we know that there were west Frankish representatives present at almost all of Otto's residencies in Aachen. No doubt these meetings helped emphasise Otto's superiority over the weakened western ruler, but the fact that his ambassadors were present during these visits may have also been intended to help Louis save face in light of his apparent capitulation over the Lotharingian question.

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73 The map in Müller-Mertens, "Verfassung des Reiches," 196, illustrates this.

74 Quotation from Falkenstein, *Otto III. und Aachen*, 30.

75 T. Reuter, *Germany in the Early Middle Ages c. 800–1056* (London: Longmans, 1991), 148.

76 Charters: *Die Urkunden Heinrichs I.*, no. 23; *Die Urkunden Ottos I.*, no. 1. Choice of Aachen as imitation of Charlemagne: Bernhardt, *Itinerant Kingship*, 4. Louis IV and the Carolingian past: above, n. 48, and Schneidmüller, *Karolingische Tradition*, 147–156; Koziol, *Politics of Memory*, 252–259, 294–306.

But in any case, this flurry of regular association with Aachen was the exception rather than the norm, as indicated by Otto's attempt to visit the palace at Easter 953 which was aborted after he discovered the locals unwilling to receive him properly.[77] This rejection took place as a rebellion was brewing in Lotharingia, the course of which provides some evidence that neither Otto nor his agents had much say in the north of the region, where local aristocrats and members of the west Frankish royal family are instead found battling for influence. It would be another fifteen years – January 966 – before Otto paid his next (and last) visit to the palace, describing it, in a charter dripping in dynastic rhetoric and nods to the legacy of Charlemagne, as "the most important royal seat this side of the Alps."[78] Even this apparently clear designation should not be interpreted as a timeless statement about Ottonian political geography, but rather as the product of a particular set of circumstances, defined by the re-establishment of a state of formal truce between the eastern and western courts and by the death of Otto's brother Brun (the duke of Lotharingia), both in 965.[79] Otto's arrival in the area in late 965 to "arrange all the affairs of the Lotharingian kingdom as he deemed suitable," though it was proclaimed in an imperial register, was primarily a reaction to these local events, and his charter's elaborate comments about Aachen and Charlemagne may reflect the fact that this unusually intrusive intervention in a region where the king was rarely seen required unusually high-pitched levels of justification.[80] It is possible that one version at least of Widukind's *Deeds of the Saxons* (the main narrative source for Otto's reign) was a product of this same moment, which may give a context for that text's famously elaborate depiction of Otto's allegedly Carolingian-style coronation at the *palatium* of Aachen.[81] But even now, with

77 Adalbert, *Continuatio*, *s.a.* 953, 166–167; Widukind, *Rerum Gestarum Saxonicarum Libri Tres*, III, 14, ed. Hirsch, 111.

78 *Die Urkunden Ottos I*, no. 316: "hoc palatium precipua cis Alpes regia sedes." For another analysis of this document see Zotz, "Symbole der Königsmacht," 363–366. Otto was probably not present at his son's coronation at Aachen in 961, but even if he had been it is significant that this followed an earlier coronation at Worms which Lotharingian magnates had not attended – hardly a sign that they were at the king's beck and call: Adalbert, *Continuatio*, *s.a.* 961, ed. Kurze, 171; Müller-Mertens, *Reichsstruktur*, 131–132.

79 I will give full details of this argument elsewhere. Contrast Regino, *Chronicle*, *s.a.* 869, ed. Kurze, 98 (an early tenth-century source) whose description of Aachen as a *sedes regni* refers to its status within Lotharingia, not the Carolingian territories writ large.

80 Quotation from Adalbert, *Continuatio*, *s.a.* 966, ed. Kurze, 177. The argument for a correlation between ideological statements and political intrusiveness is made by Reuter, "*Regemque*," 132–133.

81 Widukind, *Rerum Gestarum Saxonicarum Libri Tres*, II, 1, ed. Hirsch, 63–66.

the competition on the back foot and the king (for once) on the spot to call the shots himself, the Ottonian court struggled to assert itself in the region: a royal charter of the same period bemoans Otto's lack of resources in "those parts."[82] And when Otto II stayed at Aachen following his father's death in 973, a contemporary author from Alemannia described him as residing "in the remotest corner of his kingdom."[83]

It seems, then, that the undeniable political symbolism associated with Aachen was not a resource that the Ottonian kings could use at will, precisely because the inflation of the palace's symbolic significance coincided with its move from the royal heartlands to the geographical peripheries of the post-Carolingian kingdoms. Kings like Charles the Bald and Charles the Fat, operating within the high Carolingian hegemony of the later ninth century, had been able to appropriate the resonance of their ancestral palace effortlessly and remotely – nobody could doubt that Carolingian kings had a stake in this most Carolingian of places. But the royal protagonists of the post-Carolingian world belonged to rival dynasties, meaning that Aachen became a site of competition, a contested inheritance wrapped up in a cold war for northern Lotharingia that lingered on until the 980s. Kings like Charles the Simple, Henry I and Otto I certainly laid claim to the palace, partly by asserting its character as a *palatium*, an intrinsically royal site, but in contrast to their ninth-century predecessors seem only have been able to do so by actually being there. Their attempts to assume possession of the palace were anything but effortless, and it was only in brief windows such as the late 940s or mid-960s that circumstances permitted Otto and his circle to flaunt narratives which situated their possession of Aachen in a longer historical continuum stretching back to Charlemagne. The sentiment expressed in Otto's charter of January 966 about the pre-eminence of Aachen north of the Alps was later picked up by his grandson Otto III, who fetishised the palace and sought to associate himself explicitly with Charlemagne, even going so far as to exhume and rebury him in the year 1000. But Otto III operated in a very different environment from his predecessors, facing no serious competition for Lotharingia after 987. The ossification of Aachen's primacy was not a simple consequence of Ottonian reverence for the old emperor, far less a sign of simple continuity from the old regime – it was shaped at least as much by the tenth-century cold war for northern Lotharingia during which the palace's symbolic meaning was insisted upon by kings

82 *Die Urkunden Ottos I.*, no. 322.

83 Gerhard, *Vita S. Oudalrici Episcopi*, *c.* 28, ed. G. Waitz, MGH SS 4 (Hanover: Hahnsche, 1841), 415–416; K. Leyser, "Ottonian Government," *English Historical Review* 96 (1981), 721–753, at 750–751.

seeking a rhetorical toehold to help them cling onto their fragile grip on the region. The symbolism of the place was kept alive and cranked up precisely because it was competed over by kings who were unable to control it. Post-Carolingian kings needed to classify such places, to constantly recreate and reappropriate their royalness, in order to possess them and to stop their "sacredness" succumbing to mundanity.[84] Not just as a metonym for the kingdom, but also as a quality of place, the concept of palace-ness was an idea that had to be actively renewed if it was to remain relevant to the political geography of the realm.

4 Comparing the Ottonian Itinerary

One reason that early medieval rulers were so keen to lay claim to the permanence of royal palaces like Aachen was that kings themselves had to move around so much.[85] If visiting Aachen can be seen not so much as a routine part of the pre-973 itinerary as a means by which Otto I asserted his right to control territory and tradition – if, in other words, it was as much an argument about political geography as a reflection of it – then we should ask whether this has any implications for the notion of the royal itinerary itself. The extent to which the meaning of particular sites influenced the movement of kings is sometimes left to one side in discussions of the royal progress, flattened by the seeming precision of categories such as "heartland," "periphery" and "transit zone." The itinerary is itself regarded as an institution by historians, and indeed as the unmistakeable fingerprint of Ottonian government, distinguishing it from its Carolingian predecessor and from other contemporary polities. The most influential judgement here is that of Karl Leyser, whose great 1981 essay on Ottonian government describes the itinerary as the dynasty's "most essential and carefully administered institution."[86] The institution-ness of the royal

84 My wording here refers to the discussion of Smith, "Elementary Forms." Contrast the case of Compiègne, whose identity as a palace gradually gave way in the tenth and eleventh centuries to generic labels like "castrum" (stronghold); Bautier, "Les itineraires des souverains," 108–110.

85 T. Martin, "Chronicling the Iberian Palace: Written Sources and the Meanings of Medieval Christian Rulers' Residences," *Journal of Medieval Iberian Studies* 2 (2010), 109–139, esp. 117.

86 Leyser, "Ottonian Government," 746. See also Bernhardt, *Itinerant Kingship*, 46: "The royal progress itself became the major institution of government." The classic discussion is H. Peyer, "Das Reisekönigtum des Mittelalters," *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 51 (1964), 1–21.

itinerary is now more or less taken for granted, and has recently been reified even further by attempts to transplant the Leyserian model of tenth-century Germany to late Anglo-Saxon England.[87] Such is the centrality of the concept of itinerant kingship to current views of the tenth century that the term is often used as shorthand for a type of kingdom in which governmental institutions were weak and power was personal, and treated as inseparable from other political phenomena like the royal feast, hunt and assembly.[88]

Regarding such a package of phenomena as representative of a type of polity is not necessarily a problem, since ideal-types are useful. Nor is there any doubt that Ottonian kings (like all early European rulers) were mobile, and that there was some planned regularity to their movements – witness the tenth-century custom of visiting certain churches and palaces at specific times of the year (for example Easter at Quedlinburg), or the clear expectation that they would be able to claim hospitality from churches and monasteries in their kingdoms.[89] The concept only becomes unhelpful when the perceived institutional logic of the itinerary comes to be seen as sufficient explanation for particular political events, as in Falkenstein's argument that Otto I's visits to Aachen reveal an attempt to institutionalise a formal tradition of paschal journeys through northern Lotharingia.[90] Moreover if we accept that, as Müller-Mertens puts it, "the centre of the realm was the travelling court," we are required to play down the significance of specific places to contemporary conceptions of political order.[91] A certain amount of deconstruction is therefore in order, as a counterbalance to this tendency.

The notion of itinerant rulership is well served by a comparative perspective because it tacitly draws its force from a comparison, between kings "travelling and visiting different regions in turn" and those ruling from a "single permanent capital."[92] These categories are generally seen as mutually exclusive, and

87 L. Roach, "Hosting the King: Hospitality and the Royal *iter* in Tenth-Century England," *Journal of Medieval History* 37 (2011), 34–46; though cf. the more systematic comparison by T. Zotz, "Kingship and Palaces in the Ottonian Realm and in the Kingdom of England," in *England and the Continent in the Tenth Century*, ed. C. Leyser, D. Rollason and H. Williams (Turnhout: Brepols, 2011), 311–330.

88 E.g. Bernhardt, *Itinerant Kingship*, 49–52; cf. Roach, "Hosting the King."

89 Brühl, *Fodrum*; Bernhardt, *Itinerant Kingship*.

90 Falkenstein, *Otto III. und Aachen*, 28.

91 Müller-Mertens, "Verfassung des Reiches," 193: "Das Zentrum des Reiches war der reisende Königshof."

92 J.H.W.G. Liebeschuetz, "Ravenna to Aachen," in *Sedes Regiae* (*ann. 400–800*), ed. G. Ripoll López and J.M. Gurt (Barcelona: Reial Acadèmia de Bones Lletres, 2000), 9–30, at 28. See also C. Bowlus, "Mobility, Politics and Society in Medieval Germany," in *German Literature*

sometimes even as sequential evolutionary stages.[93] And the contrast that historians generally have in mind for itineracy is with "domination based on a fixed residence" as found in the political systems of the contemporary Byzantine and Muslim worlds.[94] But while the applicability of the notion of the "royal capital" to the kingdoms of medieval Europe has been endlessly debated, the utility of its supposed antonym, itinerant kingship, has until recently attracted very little critical scrutiny.[95] Comparing the tenth-century West with Byzantium, dominated by the city of Constantinople, would certainly validate the contrast, and shows it to be broadly useful. But we must remember that the emphatically metropolitan context of Byzantine court politics was very unusual in the Middle Ages and should not be taken as representative of capital-based government.[96] Here, then, I would like to play devil's advocate by holding up some aspects of the representation of rulership in the Caliphate as a mirror to the dominant conception of the Ottonian itinerary as a distinctive institution.

It goes without saying that the Caliphate and the *Reich* were radically dissimilar in many ways, and comparing the movement of rulers in each highlights some obvious differences. For a start the Caliphate was much more urbanised and administratively centralised. There was also the matter of climate: patterns of movement in the Middle East were much more likely to be influenced by seasonal or environmental factors. And although palaces were sometimes associated with mosques, there is no equivalent in the Caliphate to the Ottonians' relationship with monasteries and other ecclesiastical institutions that they used for hospitality and to control strategic routes.[97]

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of the High Middle Ages, ed. W. Hasty (Rochester, NY: Camden House, 2006), 277–289, at 277.

93 Brühl, "Remarques," 199–200; C. Ehlers, "Wie sich ambulante zu residenter Herrschaft entwickelt hat," in *Die Macht des Königs. Herrschaft in Europa vom Frühmittelalter bis in die Neuzeit*, ed. B. Jussen (Munich: C.H. Beck, 2005), 106–124.

94 Leyser, "Ottonian Government," 746.

95 A notable exception is the very thought-provoking critique by R. McKitterick, *Charlemagne: The Formation of a European Identity* (Cambridge: Cambridge University Press, 2008), 171–197. On capitals see for example E. Ewig, "Résidence et capitale pendant le Haut Moyen Age," in E. Ewig, *Spätantikes und fränkisches Gallien. Gesammelte Schriften 1* (Munich: Artemis, 1976), 362–408; Brühl, "Remarques"; *Sedes Regiae*, ed. Ripoll López and Gurt; D. Keene, "Ideas of the Metropolis," *Historical Research* 84 (2011), 379–398.

96 P. Magdalino, "Court and Capital in Byzantium," in *Royal Courts in Dynastic States and Empires. A Global Perspective*, ed. J. Duindam, T. Artan and M. Kunt (Leiden: Brill, 2011), 131–144.

97 Hillenbrand, *Islamic Architecture*, 83; G. Fowden, *Qusayr Amra: Art and the Elite in Late Antique Syria* (Berkely and Los Angeles: University of California Press, 2004), 282–283.

This distinction translated into the representation of rulership: whereas Western rulers were idealised as builders of churches, their counterparts in the Muslim world were flattered as founders of cities; and while Carolingian and Ottonian rulers often appropriated the palaces of their predecessors, caliphs were more usually credited with constructing their own residences from scratch, albeit often near to existing centres.[98] The difference in representation reflects the much greater wealth of the Umayyad and ʿAbbāsid elites compared to those of the West. But it also reminds us of the different historiographical traditions of the two cultures: historians in the tenth-century West, unlike those in the Middle East, were more likely to be religious professionals.

Given the fact that our European sources were often written by churchmen (and women) with direct experience of supporting the king as he moved through their area, it is perhaps surprising that they rarely identified the royal itinerary as such. Although numerous chronicles, letters and charters provide information on the logistical infrastructure which underpinned the travels of the royal court and allow us to infer the patterns of movement that helped shape early medieval political life, they do not explicitly identify the itinerary as an institution in itself. The expression *iter regis*, which is commonly used by historians as if it were a technical term for the institution of the itinerary, is actually vanishingly rare in the sources.[99] By contrast, rulers' itineraries *are* identified as specific institutions in other cultures, such as fourteenth-century Java whence we have a poem describing a royal progress which reifies the movement of the king to such an extent that the author states that "the whole of Java is to be as the capital of the king's realm."[100] Closer to home, Ṭabarī reports a speech made by the mother of a ruler from Ferghanah in which she listed the six essential characteristics of a king, the last of which was possession of "a storehouse sufficient to live off no matter where in the world he takes it."[101]

It is true that Western annalists frequently recorded where the king spent Easter and Christmas, but this historiographical reflex (which suggests a desire to show a connection between secular events and the religious calendar) is also found in the East, where Ṭabarī ended his "annalistic" entries by stating which member of the ruling dynasty had led the Hajj that year. And although

98 Hillenbrand, *Islamic Architecture*, 378–379; Fowden, *Qusayr Amra*, 143.

99 Based on basic searches in the MGH and *Patrologia Latina* databases.

100 Geertz, "Centers, Kings and Charisma," 129–134. In the same article (134–142) Geertz discusses similar sentiments concerning the rulers of nineteenth-century Morocco.

101 *The History of Al-Tabari. Vol. 26: The Waning of the Umayyad Caliphate. Prelude to Revolution, ad 738–745*, trans. C. Hillenbrand (Albany: SUNY Press, 1989), 34.

the sources make it clear that post-Carolingian rulers were ceaseless movers, in the eyes of tenth-century historians like Widukind of Corvey or Flodoard of Reims the king tended to disappear over the horizon when he left Saxony or Francia respectively; these writers did not perceive the political centre of the realm as infinitely mobile, constituted only in the spotlight surrounding the king, but instead regarded their own milieus as central, permanent and immovable. Indeed, the best-known early medieval description of itinerant kingship *per se* values it negatively – Einhard's famous description of the last Merovingians (the kings deposed by the Carolingians) as moving from place to place on "a cart pulled by yoked oxen and led by a cowherd in the country manner."[102] This is strikingly similar to one of Ṭabarī's comments about the late Umayyad caliph Walid II, an exact contemporary of the last Merovingians: "he began to dislike places where there were people … he kept on moving about and going out hunting, and he distressed the people and his soldiers."[103] These statements of Einhard and Ṭabarī are highly ideological, intended to contrast the rusticity and mobility of an old dynasty with the civility and stability of the rulers who deposed them.[104]

This representational similarity reminds us that, for all the self-evident differences between the Frankish and Muslim worlds, they both had dynastic political systems, and place played an important role in dynastic competition. Thus for example we have inscriptions and elaborate picture cycles at two residences owned by Walid II before he became Caliph, which were intended to advertise his claims to the succession (against those of his cousins).[105] This attempt to categorise his own possessions as innately royal recalls the late Carolingians rebranding their itineraries by selectively applying the term *palatium* to different residences, and Otto I attempting the same at Magdeburg – in

102 Einhard, *Vita Karoli*, *c.* 1, ed. Holder-Egger, 3, trans. Ganz, *Two Lives*, 19.

103 *The History of Al-Tabari. Vol. 26*, 127.

104 Walid II was a particular target for retrospective defamation by ʿAbbāsid writers: *The History of Al-Tabari, Vol. 26*, XIII–XIV. On the widespread Western stereotype about the superiority of the settled to the pastoral see R. Bartlett, "Heartland and Border: The Mental and Physical Geography of Medieval Europe," in *Power and Identity in the Middle Ages. Essays in Memory of Rees Davies*, ed. H. Pryce and J. Watts (Oxford: Oxford University Press, 2007), 23–36. The desert was a value judgement as much as a location: *The History of Al-Tabari, Vol. 26*, 80–81 depicts the Caliph Hisham retreating to the desert before letting slip that he was actually resident in a Byzantine city.

105 A. Marsham, *Rituals of Islamic Monarchy. Accession and Succession in the First Muslim Empire* (Edinburgh: Edinburgh University Press, 2009), 126–128; Fowden, *Qusayr Amra*, 175–196.

each case we see rulers attempting to assert the public political nature of centres with which they were personally associated.

The symbolic character conferred on his remote desert palaces by Walid II was all the more visible at such major centres as Baghdad and Damascus, which are commonly imagined as representing a type of site – the capital – alien to the early medieval West. Nonetheless, basic parallels can be identified. Baghdad's centrality was exported and reproduced, like Aachen's, through architectural imitation in the construction of new palaces in other parts of the Caliphate.[106] Even when the "capital" itself moved, as when Charlemagne's contemporary Harun al-Rashid established al-Raqqa in Syria as his main residence, the notion of Baghdad as the centre of the realm persisted. On returning from a visit to the distant eastern province of Khurasan in late 805 Harun travelled back to al-Raqqa via Baghdad. Though he did not even stay there overnight he was careful to stage a demonstrative political act as he passed, displaying mastery over his dynasty by burning the body of his sister's fiancé, who had disobeyed him, on a bridge. The brief stop also generated a burst of historiographical activity on which Ṭabarī drew, relating a speech that the Caliph was reputed to have made to one of his commanders in which he described Baghdad as a great "seat of power" and as his home (which it clearly was not) and that of his forefathers. He also excused his departure for al-Raqqa as prompted by his need to keep rebels in check: "If it were not for that, I would never leave Baghdad or set foot out of it as long as I lived." A poem written on the same occasion dwelled on the idea that Harun had neither really stopped nor started his journey at Baghdad, and therefore tried to imply that he was, paradoxically, always there.[107] The late Umayyad capital at Damascus had had a similar aura for those who wished to wield power at the political centre. When, for example, Walid II needed to advertise his acquisition of the Caliphate in 743 he came to Damascus to receive the oath of allegiance, even though he had spent almost his entire career away from the city. By the same token, when Yazid III deposed Walid a year later, he did so not by capturing or killing his opponent, but by successfully riding into Damascus on an ass, though the Caliph himself was not there.[108]

106 *The History of Al-Tabari, Vol. 28: Abbasid Authority Affirmed*, trans. J.D. McAuliffe (Albany: SUNY Press, 1995), 244–245; H. Kennedy, *The Prophet and the Age of the Caliphates: The Islamic Near East from the Sixth to the Eleventh Century* (London and New York: Longman, 1986), 136.

107 *The History of Al-Tabari, Vol. 30: The Abbasid Caliphate in Equilibrium*, trans. C.E. Bosworth (Albany: SUNY Press, 1989), 256–257.

108 *The History of Al-Tabari, Vol. 26*, 141–148; G. Hawting, *The First Dynasty of Islam. The Umayyad Caliphate ad 661–750* (London and Sydney: Croom Helm, 1986), 90–94.

In these two instances we do not see the capitals of the Caliphate acting as practical centres of rulership, for at these moments the rulers in question were permanently absent from them. But the cities nonetheless remained vital as stages for acts of symbolic communication by which rulers asserted their legitimacy and authority – in other words their very right to be regarded as rulers. They may have been administrative centres, but the pull they exerted was symbolic as well as bureaucratic. These Caliphs' need to advertise their association with such centres lay partly in the fact that their grasp on them was weak – the pattern of his earlier career meant that Walid II had little support in Damascus, and although the real reasons for Harun's move to Syria are not clear, some Caliphs of that era are known to have felt insecure in Baghdad.[109] These were places whose political meanings made them all-encompassingly significant but which in terms of political geography could sometimes become peripheral, so that even when they could not be used as seats of rule, rulers had to somehow possess them. Narratives and traditions clung doggedly to particular locations, often outlasting the specific political configurations that had given rise to them in the first place. The patterns of movement that we see here, and in post-Carolingian Europe, were shaped not just by governmental practicalities, nor by the internal institutional logic of royal itineracy, but also by the meanings of places and, in aggregate, the "representative landscape" of the realm.[110]

The comparison is in many ways superficial: Harun and Walid were not typical Caliphs; post-Carolingian kings did not control an administrative structure based at particular locations; and rebranding the ʿAbbāsids as itinerant rulers would hardly be accurate. But probing the supposed opposition itinerary / capital helps remind us that just as the Caliphate was not simply a rigidly-defined structure of capitals and provinces, the Ottonian kingdom need not only have existed within the spotlight that followed the king round his kingdom. The concept of "itinerant kingship" as shorthand for a kind of polity based on features such as the ruler's presence, ritualised solemnities, hunting and feasting is not as useful as it seems because such features were also crucial to the conduct of politics in much more bureaucratised systems like the Caliphate. The image of the relentlessly mobile Ottonian king, moving from place to place and scattering Weberian charisma behind him like the tail of a comet, is perhaps not quite so singular: the conceptual opposition between a single static centre and a forever mobile royal court obscures what these

109 Kennedy, *Court of the Caliphs*, 66–67, 202; A. Northedge, *The Historical Topography of Samarra* (London: British School of Archaeology in Iraq, 2005), 247.

110 See Reuter, "*Regemque*," 141, for this expression.

polities had in common.[111] The contrast of types remains useful, especially were we to compare purer examples of itinerant kingships such as Geertz's Java with more emphatically metropolitan empires such as Byzantium. But in between we see a spectrum of polycentric realms whose centres had a range of shifting meanings which affected the way rulers interacted with them. Itineracy was less a coherent system of rule, drifting free of institutional moorings in a swamp of statelessness, than a habit of movements between highly symbolic but immobile centres – the destination mattered more than the journey.[112]

5 Conclusion

This article has hardly provided a comprehensive account of perceptions of the palace after 888, nor (given the primary focus on east Francia/Lotharingia) should its claims be thought necessarily to apply equally across all parts of the former Empire. But because they helped articulate the notion of Carolingian order, focus on palaces does at least show us a corner of a bigger picture, and illuminates some of the texture of post-888 politics. Although 888 was a before-and-after moment in the "patterned mess" of history, debates about change and continuity are not really adequate to describe the nature of the transition.[113] Continuity, indeed, is a problematic concept for historians, and can easily melt into a denial of change which misrepresents the dynamism of all political history, including that of the early Middle Ages. Asking whether political institutions and the notion of a "state" survived or did not survive the disintegration of the Empire only gets us so far because those categories are

111 The opposition between charismatic and bureaucratic rule is sometimes posed too starkly: See E. Shils, "Charisma, Order and Status," *American Sociological Review* 30 (1965), 199–213; C. West, "Unauthorised Miracles in Mid-Ninth-Century Dijon and the Carolingian Church Reforms," *Journal of Medieval History* 36 (2010), 295–311, at 308–310; Roach, "Hosting the King," 45. On the co-existence of itineracy and administrative government in the Central Middle Ages see B.F. Reilly, *The Kingdom of Léon-Castilla under King Alfonso VI, 1065–1109* (Princeton: Princeton University Press, 1988), 148–157; R.J. Bartlett, *England Under the Norman and Angevin Kings, 1075–1225* (Oxford: Oxford University Press, 2000), 133–143 (also pointing out that mobile and sedentary rule need not be seen as mutually exclusive).

112 These comments echo those of R. McKitterick, "A King on the Move: The Place of an Itinerant Court in Charlemagne's Government," in *Royal Courts*, ed. Duindam, Artan and Kunt, 145–169, esp. 166–167.

113 For "patterned mess" see M. Mann, *The Sources of Social Power. Vol. 2: The Rise of Classes and Nation States, 1760–1914* (Cambridge: Cambridge University Press, 1992), 4.

potentially anachronistic. Tracking contemporary perceptions of the palace gives a different perspective, showing us a world in which symbols of political order survived not as a vague or passive adaptation of Carolingian traditions, but as part of active struggles to instrumentalise the Carolingian past in pursuit of immediate political goals. This was a world where cores and peripheries had been inverted, in which the location of the political centre had become insecure, disputed, and subject to constant change, and in which the *palatium*, where concepts of geography and order coincided, became a site where claims about the relationship of past and present were loaded with tension – the world of Notker of St Gall and Regino of Prüm, who saw the predictable past coming to a certain end and looked anxiously into a future full of doubt. When a new European hegemony gradually emerged from the military successes of Otto I in the 940s and 950s, post-Carolingian geography acquired a sense of solidity, with a new confidence in the shape of the political order reflected in the revival of large-scale historical writing in circles surrounding the court in the 960s. But the Ottonian order of the later tenth century was not an alternative package of norms and structures which simply appeared to fill a vacuum left by the vanished institutions of the Carolingian Empire, nor did it represent a modified perpetuation of those institutions. Rather, it was something that was dynamically and accidentally created by the competition for power and legitimacy which took place in the five or six decades after 888.[114]

114 For valuable comments on earlier versions of this article I am grateful to Stuart Airlie, Tim Greenwood, Matt Innes, Ruth Macrides, Jinty Nelson and Jens Schneider. For feedback and discussion I also thank the other members of the Diverging Paths group, and seminar audiences at the universities of Edinburgh and Tübingen.

CHAPTER 15

Monasteries

Institutionalisation and Organisation of Space in the Byzantine World until the End of the Twelfth Century

*Michel Kaplan**

Monasticism was born in part in reaction against the institutionalisation of the Church as imperial from the time of Constantine; from this origin, throughout a large part of Byzantine history, monks retained a contestational attitude when faced with imperial and ecclesiastical institutions. However, this was altered with monasticism's own evolution, its growing standing due notably to the monks' presence on the land, in towns and in the countryside, as well as the importance that monastic properties took on. This was something against which the institutions themselves, political and ecclesiastical, reacted. Indeed, from the end of the fourth century, Basil of Caesarea sought to channel Cappadocian monasticism.[1] The Council of Chalcedon (451) sought to place monks under the institutional authority of the bishop.[2] Justinian promulgated numerous laws intended to subject monasticism to an institutional framework. The second Council of Nicea (787) made the presence of an office characteristic of the episcopal institution, the steward, compulsory. Not long afterwards, Theodore the Studite sought to issue precepts that would systematise those of Basil of Cesarea, and to turn monasticism as a whole into an institution capable of exerting influence over the Empire's religious politics.

Anthony, one of the fathers of monasticism – or at least considered as such by all who followed him, to such an extent that his Life, written by the patriarch

* Translation by Abigail Jamet.

1 *Patrologia Graeca* 31, cols 889–1306; A.M. Silvas, *The Asketikon of St Basil the Great*, Oxford Early Christian Studies (Oxford: Oxford University Press, 2005). In fact this consisted of two sets of precepts, the "small" and "great" *asketikon*, both written in the style of questions and answers. Basil had founded a monastery in Caeserea, about which we know nearly nothing, and his sister Macrine had founded another; idem, *Macrina the Younger, Philosopher of God*, Medieval Women: Texts and Contexts 22 (Turnhout: Brepols, 2008); Grégoire de Nysse, *Vie de sainte Macrine*, ed. and trans. P. Maraval, Sources Chrétiennes 178 (Paris: Cerf, 1971).

2 The councils were meetings of bishops, although summoned and presided over by the emperor, or presided over by his representative; it is the political power's promulgation that made the conciliar acts executive. Thus the political and the ecclesiastical institutions acted hand in hand.

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Athanasius of Alexandria,[3] constitutes one of literature's best-sellers – certainly initially wished to live alone in the desert as a hermit, which does not require any institution, in order to return better into the world to convert it and make "of the desert a city":[4] he was thereby referring to a major institution of the late Roman world. Space and institutionalisation thus met. We here seek to examine this dialectic between space and institutionalisation in the history of Byzantine monasticism: monasticism organised the space in which it developed, being itself both the cause and the means by which it and others organised space.

The quotation underlying the title of Chitty's work, "And the desert became a city …" (for the remainder of the quotation see below, p. 324), clearly shows the author's concern with this problem; his second chapter deals with what he judges to be the birth of the institution. Nevertheless, there have been few systematic studies of this problem for the Byzantine world, whereas for the medieval West scholars have drawn much attention to the role played by the monasteries in the organisation of space, and particularly to the goals of those who founded them.[5] For Byzantium, hagiography has been the particular focus, a fact not without importance, seeing as most of the saints were monks and founded monasteries.[6] However, the development of archeological studies, already long-standing in Egypt, a little more recent in ancient and

3 *Vie d'Antoine*, ed. G.J.M. Bartelink (BHG 140), Sources Chrétiennes 400 (Paris: Cerf, 1994, 2004).

4 The motto that served as a title for D.J. Chitty, *The Desert a City: An Introduction to the Study of Egyptian and Palestinian Monasticism under the Christian Empire* (Oxford: Blackwell, 1966).

5 O.G. Oexle, "Les moines d'Occident et la vie politique et sociale dans le Haut Moyen Âge," in *Le monachisme à Byzance et en Occident du VIII^e au X^e siècle. Aspects internes et relations avec la société*, ed. A. Dierkens, D. Misonne & J.M. Sansterre, *Revue Bénédictine* 103 (1993), 255–272. M. de Jong, "Carolingian Monasticism: The Power of Prayer," in *The New Cambridge Medieval History*, II, *c. 700–900* (Cambridge: Cambridge University Press, 1995), 622–653 and 995–1002 (bibliography). A.M. Helvétius & M. Kaplan, "Asceticism and Its Institutions," in *The Cambridge History of Christianity*, vol. 3, *Early Medieval Christianities, c. 600–c. 1100*, ed. T. Noble & J. Smith (Cambridge: Cambridge University Press, 2008), 275–298 and 703–712 (bibliography). A.M. Helvétius, "L'organisation des monastères féminins à l'époque mérovingienne," in *Female* vita religiosa *between Late Antiquity and the High Middle Ages. Structures, Developments and Spatial Contexts*, ed. G. Melville & A. Müller, Vita regularis. Ordnungen und Deutungen religiösen Lebens im Mittelalter. Abhandlungen, 47 (Berlin, Münster: LIT Verlag, 2011), 151–169.

6 *Les saints et leur sanctuaire à Byzance: Textes, images et monuments*, ed. C. Jolivet-Lévy, M. Kaplan & J.P. Sodini, Byzantina Sorbonensia 11 (Paris: Publications de la Sorbonne, 1993); *Le sacré et son inscription dans l'espace à Byzance et en Occident. Études comparées*, ed. M. Kaplan, Byzantina Sorbonensia 18 (Paris: Publications de la Sorbonne, 2001).

medieval Palestinian and Syrian lands, and barely existing for the rest of the territory that was once Byzantine, provides us with important clues as to the organisation of space, both within places of asceticism and regarding their relation to other habitats. In Egypt, the abundance of papyri provides supplementary information on these points until the end of the Byzantine period in these provinces.[7] The relationship between monks and towns, with their institutions, has been the focus of more attention.[8] We will therefore endeavour to see how the processes of institutionalisation and appropriation of space combined in the history of Byzantine monasticism (see Map 1).

"If you want to be perfect, go, sell your possessions and give to the poor, and you will have treasure in heaven. Then come, follow me" (Matthew 19:21, NIV): this was the basis of the ideal of a truly evangelical life, the early Christian's drive for renouncing the world. This precept was initially taken literally, and the ascetic intended to live a life of prayer, of radical poverty in begging and of wandering without any fixed abode, preaching conversion to this ideal. The word "monk" did not refer to a social condition, solitude, but carried a purely spiritual meaning: the Greek *monos*, the origin of the term "monk," signified that through this lifestyle the ascetic would become one with God. Consequently, nowhere was home for him: he was the *xénos* (the stranger, in the sense of "the one who is not from this place") and his lifestyle was *xéniteia*; his critics would accuse him of being a gyrovague.[9] We will return to the problem such a man (or woman) would present in towns, specifically in Constantinople.

1 Egypt

We only know of Anthony's life through Athanasius of Alexandria's account, written not long after the saint's death in 356; his true character may elude us, but not what he represented for the future. We are told that, after various

7 For Egypt, one need only consult the remarkable as well as recent work by E. Wipszycka, *Moines et communautés monastiques en Égypte* (*IV^e–VIII^e siècles*), *The Journal of Juristic Papyrology*, supplements XI (Warsaw: Warsaw University, 2009). For example, see Chapter 3, "Géographie de l'Égypte monastique," 107–225, and Chapter 10, "Questions économiques," 471–565.

8 G. Dagron, "Les moines et la ville. Le monachisme à Constantinople jusqu'au concile de Chalcédoine (451)," *Travaux et Mémoires* 4 (1970), 229–276, reprinted in id., *La romanité chrétienne en Orient*, Variorum Collected Studies series 193 (London: Variorum, 1984), VIII; E. Wipszycka, "Le monachisme égyptien et les villes," *Travaux et Mémoires* 12 (1994), 1–44.

9 A. Guillaumont, "Le dépaysement comme forme d'ascèse dans le monachisme ancien," *Annuaire de l'École pratique des Hautes Études, V^e section: Sciences religieuses* 76 (1968–1969), 31–58.

attempts at isolation, Anthony crossed the Nile to settle in an abandoned fort in the desert, where for twenty years he remained isolated (he was only provided with fresh supplies twice a year). At the end of these twenty years, his friends broke down his door, and Anthony welcomed them, completely unaffected in either body or mind by his trial. From this moment on he healed the sick, delivered those possessed by demons, comforted the stricken, reconciled those who fought and taught those who came to him. "Thus, from this moment, the *monasteria* were established in the mountains; the desert became a city of monks (ἡ ἔρεμος ἐπολίσθη μοναχῶν) who had relinquished what they owned, and who replicated the life of the city in the heavens."[10] As Chitty notes,[11] this is the first time that Athanasius used the terms "monk" and "monastery"; in this way he turned monasticism into an institution. It is important to note that this Life's chronology situates this narrative in 306, before Christianity had received authorisation. Therefore, monasticism was born of an interpretation of Christianity that significantly predated 312, and cannot be reduced simply to a reaction to the institutionalisation of the authorised Church. Besides, Anthony was not the only ascetic: the novelty lay not with monasteries, but rather with

10 "Vie d'Athanase l'Athonite" (Vie A par Athanase de Panagiou, BHG 187; Vie B, BHG 188), *Vitæ duæ antiquæ sancti Athanasii athonitæ*, *c.* 14, ed. J. Noret, Corpus Christianorum, Series Graeca 9 (Louvain, 1982), 172–174. We have altered the editor's translation to make it more literal. The editor translated μοναστήρια as hermitages, which prejudges the form that these groupings of monks took. The term comes from the verb μονάζω, to be μόνος. The latter means both alone and unique. It therefore refers as much to the state of solitude (hence the translation "hermitage") as to the state sought by monks according to the tradition of Platonic philosophy of becoming one with God (cf. the noun ἡ μονάς, which gives the English *monad*, formed from the genitive). This is precisely the goal that the ascetic sets himself through his practices, and which allows him to forget his body. Already in the Gospel of Thomas, which probably originated from Syria and which existed before the end of the second century, the term μονάχος referred both to the ascetic separated from the world, and to him who, once separated, rediscovers unity with his maker. As for the noun μονή, which would also come to describe monasteries after Justinian's legislation, it is formed from the verb μένω (to dwell, to live, but also to be fixed, sedentary), and which means "place where one resides." For more on the meaning of the terms designating the Egyptian monasteries, cf. Wipszycka, *Moines et communautés monastiques*, 281–283; the author emphasises that the term *monasterion* does not prejudge the eremitic or cenobitic types of organisation. Although not without some caution, one should refer back to the classic A. de Vogüé, "Monachisme: Histoire ancienne," *Dictionnaire critique de Théologie* (Paris: PUF, 1998), 746–749 (= id., *Regards sur le monachisme des premiers siècles* (Rome: Pontificio Ateneo S. Anselmo, 2000), 98–106). *Monachos* also refers to single life.

11 Chitty, *The Desert a City*, 30–31.

those located in the mountains. Nor was the novelty the retreat into the desert, for entire groups of pagan Egyptians were already doing so, either as part of a spiritual quest or in order to escape Roman, particularly fiscal, administration.

If we are to believe Athanasius of Alexandria, the monastic institution was contemporary to Anthony's ascetic exploits, and we are compelled to believe the prelate's testimony. Yet, this institutionalisation was not followed by a real spatial imprint. Things were to develop very differently with Pachomius, some forty years younger than Anthony, who converted to Christianity after 312. If Anthony probably came from a wealthy family, Pachomius was a poor wretch, forced to join the imperial army, and more deeply rooted in Coptic traditions.[12] We have at our disposal an important number of Coptic Lives by Pachomius, alongside Greek Lives, probably written some time later;[13] we also have the rule that he may have written for his monastery, or which was subsequently recorded by his continuators.[14] Having initially joined a certain Palemon as a hermit, he settled in 321 in an abandoned village of the Upper Nile Valley, Tabbenesi: thus the inclusion in Coptic peasant society came first. With the disciples he attracted, probably around twenty or so, he formed a community (κοινωνία, *koinônia*, from which the term cenobitism is derived), which he led: in this way an institutional feature immediately appeared. Soon, space came to be delimited by an enclosure. Pachomius seems to have limited the rigour of the strictly ascetic practices, fast and vigil in favour of what the monks did collectively: prayer and meal times. A monk owned nothing but his clothes and had to relinquish all his belongings to the monastery, which held this property. A monk would work according to his abilities within the monastery, and monks would be grouped in houses, in keeping with their skills. Obedience to the superior, called prior, one who is placed in front, was elevated to a cardinal virtue. Men were not the only ones affected. Mary, Pachomius' sister, founded a female establishment on the other bank of the river Nile, placed under Pachomius' authority and ruled by an elderly monk, *abba* Peter:[15] it was therefore, effectively, a double monastery. If each monk was property-less, this was not the case with the institution, which exploited lands and owned ships that sailed the Nile to sell its produce, or to share that produce among the other

12 In Coptic, *Pachôme* means *eagle*.

13 There are two recorded Greek versions: The older Life has reached us in Greek, and we only know of the second Life because of the translation by Dennis the Little, an originally Scythian scholar who lived in Rome in the first half of the sixth century.

14 We mainly know of this rule through Jerome's Latin translation, dating from 404, which certainly reflects things as they were after Pachomius' death in 346.

15 Wipszycka, *Moines et communautés monastiques*, 568–588 ("the double monasteries").

monasteries that Pachomius had created and combined. In so doing, it conformed perfectly to contemporary Egyptian society.[16]

Faced with this initial success, Pachomius could only multiply his foundations. At his death, he had nine monasteries for men and two for women under his leadership. This was a truly global institution, described by the ancient Greek Life as *koinônia* (community), referred to as the Tabennesiots and gathering several hundreds monks and nuns.[17]

Just as the success of Pachomian cenobitism was considerable, so was that of the anchoritic life. On "mount" Pispir, in the Lower Nile Valley, at the level of the Fayum, on the right bank of the river and not very far from the cultivated zone,[18] a significant number of Anthony's disciples formed a veritable colony of anchorites. Each lived primarily in solitude, yet close to the others and to the supply areas, receiving precepts from the "father" (*apas, abba*) during visits to or by him.[19] The verb that Athanasius used for the relations between Anthony and these monks is καθηγοῦμαι, a strong verb that implies real direction, inferring a true institution in the reader's mind, from which the Greek term designating the superior, the *higumenos*, is derived.

However, it is in the vicinity of Alexandria, the very active, brilliant and populous capital of Roman Egypt, that the development of this network of anchorites was most spectacular, and probably also most precocious.[20] The first we know of in this region is that of the Nitrian "mountain" (in fact a nondescript hill), some forty kilometres south of Alexandria, which expanded from 320–330. The overpopulation was soon such that its founder, Amun, withdrew some

16 Ibid., 504–533. The author shows that important donations to the Pachomian monasteries were impossible because of the legal and tax constraints weighing upon arable lands in Egypt. As everywhere else in Egypt, the monks consequently took leases on lands that they could have had exploited by peasants, but that they cultivated themselves instead; we know this from the qualms expressed by Pachomius and his disciple and second successor Theodore, towards work that distracted the monks from their first calling, and which led them to vie for excellence in this work.

17 P. Maraval, "Le monachisme oriental," in *Histoire du Christianisme des origines à nos jours*, vol. 2: *Naissance d'une Chrétienté* (*250–430*), eds. C. and L. Piétri (Paris: Desclée, 1995), 719–745, at 726–730.

18 For the location of "Mount" Pispir, cf. Wipszycka, *Moines et communautés monastiques*, 253–261.

19 "Vie d'Antoine," *c.* 15, ed. Noret, 176: "Through frequent conversations he heightened the fervour of those who were already monks and aroused in most others the desire for the ascetic life. Soon, by his persuasive words, a very high number of *monasteria* were created, all of which he directed as a father."

20 Maraval, "Le monachisme oriental," 724–726.

twenty kilometres further south in order to set up the *Kellia*, where he intended to preserve solitude.[21] The most famous of these centres, established by Macarius a further forty kilometres south, is that of Scetis. In marked contrast to the other founders or spiritual fathers, Macarius was a priest, which further reinforced his role as spiritual head. In all three cases, as indeed in many others, it was less a single community than a loose gathering of different subgroups uniting a small number of anchorites living in their *kellion*, yet partaking in a minimum of community life. These groupings are often called "lavras," but the term λαύρα originates in Palestine and does not appear in Egyptian documentation until the fifth century.[22] The original meaning of the term was "road" or "way" that which one would use to go from one *kellion* to another, or to the central buildings which made up its main structure, and which defined what henceforth was a true spatialised institution. By extension, the term could also refer to a complex of monastic establishments, most often a mixture of isolated *kellia*, networks of anchorites and cenobites.

We will only look into one example of this for Egypt, but one of the best studied in archaeology, that of the "lavra" of al-Naqlun.[23] This complex was situated near the Fayum oasis; it remained in operation under the Arab domination, as indeed it has right up until today. A high number of *kellia* – which were grouped into "hermitages," often in twos and threes, with service rooms but not necessarily a bread oven[24] and a court used for work – often depended upon the centre, which probably existed from the very beginning, and which combined economic, administrative and cultural functions. A large portion of the "hermitages" was dug into the rock of Jebel al-Naqlun, while another section was built on the plain on the other side of the centre. That the whole formed a single complex, a "lavra," is confirmed by the *Rule of Naqlun*, which is preserved solely in its Arabic version and is therefore late and composite, but constitutes the only known rule aside from the *koinobia*.[25]

21 *Kellion* (κελλίον) is the diminutive for κέλλα, a term borrowed from the Latin *cella*, which initially described a cellar, but also the sanctuary of a pagan temple. Far from being a mere cell, it refers to a complex of rooms, at least two, including, next to the monk's dwelling place, the one or many rooms dedicated to work and/or to the storage of goods, that is the fruit of work and fresh supplies.

22 Wipszycka, *Moines et communautés monastiques*, 288–290.

23 Ibid., 128–138.

24 "Hermitages" equipped with a bread oven were rare, with bread being baked in the centre of the monastic complex.

25 Ibid., 66–67. There is a French translation of the rule, reconstituted in light of the latest papyrologic finds, with a complete commentary in E. Wipszycka, *Études sur le christianisme dans l'Égypte de l'Antiquité Tardive* (Rome: Institutum Patristicum Augustinianum, 1996), 399–401.

Thus once again we find ourselves facing strong institutionalisation following, or accompanying a rational occupation of space: the furthest hermitages were about 500 metres away from the centre, which facilitated liturgical and material complementarity. This was a space that was initially free, being in the desert and not included in the cadastre, yet within the immediate vicinity of the oasis, which, in one way or another, supplied it with its means of existence.

Egyptian monasticism is often considered an essentially rural phenomenon, overwhelmingly composed of Copts, seen as poor and for the most part uneducated. This is an opinion that stands to be corrected.[26] Similarly, exclusively rural monasticism has been overestimated in relation to urban monasticism, particularly since beyond the metropolises of the administrative districts (*nomes*), in which the aristocracy or bishops had their seats, the majority of the population working in agriculture lived in large towns of several thousand inhabitants with a compact urban structure.[27] It does seem that most of the female monasteries were located in towns, the status of hermit or nun living in a grouping being refused to women.[28]

It would take too long to describe monasticism's implanting in Alexandria as well as in its suburbs, which is better known in this respect. From the last decades of the fourth century the town was surrounded by a ring of monasteries. The most important complex was that of Enaton, located nine miles (around 16 kilometres) from the town. It was a vast complex made up of several *koinobia*, and yet not necessarily excluding groupings of hermits, or even isolated monks (isolation being very relative in this setting). However, this diversity did not prevent the participants from obeying one *higumenos*,[29] which implies a certain degree of institutionalisation. Monastic institutions therefore occupied a significant position in the landscape of Alexandrian Christianity, whether through their physical visibility or through the role they played in religious controversies, which were particularly intense in Alexandria, one of the major hubs of resistance to the doctrine defined by the Council of Chalcedon. Some of the monasteries in Alexandria and its region were the chosen locations for the elaboration of ecclesiastical plots to overthrow a patriarch

26 Wipszycka, "Le monachisme égyptien et les villes," 39–44.

27 Ibid., 2–3.

28 Ibid., 9.

29 For example, Longinus, who was one of the chief figures of the monophysite party in the second half of the fifth century: "Vie de Longinos" (Coptic text), *Vite dei monaci Phif e Longino,* ed. T. Orlandi & A. Compagnolo, *Testi e documenti per lo studio dell'antichità* 51 (Milan: Cisalpino, 1975), 79–83.

suspected of being a traitor to a cause, or of being lukewarm.[30] The Alexandrine pattern could be found all throughout Egypt, for indeed most towns or very big villages with an urban character had monasteries both in the town and in the vicinity of their *chôra* (countryside).

2 Palestine

Equipped with this very detailed study of Egyptian monasticism, we proceed swiftly onto Palestinian monasticism.[31] The places of pilgrimage supply us with the clearest information on monasticism in Palestine in the fourth century. Having come through Egypt, Melania the Elder arrived in Jerusalem around 385, where, a few years later, she founded a monastery on the Mount of Olives: the institutional aspect is clear, as is its urban placement at the heart of the holy places. In addition, her travelling companion, Rufinus, founded a men's monastery nearby; both these establishments were busy with welcoming pilgrims, an essential feature of the Holy City's monasticism. This phenomenon developed further with the arrival of Melania the Younger and of her husband Pinianus in 417.[32] In 431 or 432, she founded a monastery for women,[33] and then, following her husband's death, a monastery for men in the presumed location of the Ascension.[34] Jerusalem was not the only city to benefit from this connection between pilgrimage and monasticism: in 386, Paula and her master Jerome established twin monasteries in Bethlehem.[35]

30 Wipszycka, "Le monachisme égyptien et les villes" 21–26.

31 It is worth referring to two complementary and recent articles in *Christians and Christianity in the Holy Land from the Origins to the Latin Kingdoms*, ed. O. Limor & G.G. Stroumsa, Cultural Encounters in Late Antiquity and the Middle Ages 5 (Turnhout: Brepols, 2006): B. Bitton-Askelony & A. Kofsky, "Monasticism in the Holy Land," 258–291; and Y. Hirschfeld, "The Monasteries of Palestine in the Byzantine Period," 402–419.

32 "The Greek Life of Melania by Gerontius" (BHG 1241), *Vie de sainte Mélanie*, *c.* 35, ed. D. Gorce, Sources chrétiennes 90 (Paris: Éditions du Cerf, 1962), 192. There is also a "Latin Life" (BHL 5885), *La vie latine de Sainte Mélanie*, ed. P. Laurence, Collectio minor 41 (Jerusalem: Studium Biblicum Franciscanum, 2002).

33 "Vie grecque de Mélanie la Jeune," *c.* 41, ed. Gorce, 204.

34 Ibid., *c.* 49, ed. Gorce, 220.

35 Bitton-Askelony & Kofsky, "Monasticism in the Holy Land," 264. For more on the monasteries founded by pilgrims, M. Dietz, *Wandering Monks, Virgins and Pilgrims. Ascetic Travel in the Mediterranean World, A.D. 300–800* (Philadelphia: Pennsylvania State University, 2005), and particularly 107–153.

The desert of Judea, east of Jerusalem, is considered to be "the desert of the Holy City".[36] Indeed, this is where monastic foundations, and probably the most famous of all, flourished. One of them, the lavra of Mar Saba, is still in operation today. The term lavra was retrospectively applied in Egypt to groupings of hermits, before describing a type of establishment to which we will return throughout the Byzantine period. Despite the reservations that the work of Cyril of Scythopolis raises,[37] the first great character was a Cappadocian, Euthymius, who arrived in Palestine in 405 while on a pilgrimage from his cenobitic monastery in the region of Melitene. Euthymius founded two monasteries prior to his lavra. According to Cyril, in order to reach the lavra, the lavrite aspirants passed by the monastery of Theoctistus, Euthymius' companion, which was the way that Sabas took,[38] as did Cyril himself[39] before reaching New Lavra, Sabas' foundation, in 555.[40]

With the Life of Sabas, whom Cyril knew much better despite only being seven years old at the time of Sabas' death in 532[41] – he wrote in the years 545–560 – we probably come closer to reality. Born in 439, Sabas spent sixteen years in Euthymius' monastery († 473), of which Theoctistus was in charge. In 478, he reached the *wadi* Kidron, and five years later founded the lavra which still exists today (see Map 2).[42] According to the Life, when the number of disciples reached seventy, each with their own *kellion* and a cave,

36 "Vie de Sabas," *c.* 7, *Kyrillos von Skythopolis*, ed. E. Schwartz, Texte und Untersuchungen zur Geschichte der altchristlichen Literatur 49, 2 (Leipzig: Hinrichs, 1939), 90.

37 Edition quoted in the previous footnote. Cyril speaks from the viewpoint of a member of the hierarchy at the close of a century-long conflict that shook Palestinian monasticism, torn between the partisans and adversaries of the Council of Chalcedon (451); he very likely reconstituted part of Euthymius' work by analogy with that of his main hero and contemporary, Sabas.

38 Euthymius explained to Sabas that the lavrite life did not suit a very young monk (Sabas was already a monk when he arrived in Palestine) and sends him to Theoctistus' monastery: "Vie de Sabas," *c.* 7, ed. Schwartz, 91.

39 "Vie d'Euthyme," *c.* 49, 71–72; the same episode is told in more detail in the "Life of John the Hesychast" (BHG 648), *c.* 20, *Kyrillos von Skythopolis*, ed. Schwartz, 216–217.

40 "Vie de Sabas," *c.* 90, ed. Schwartz, 199–200.

41 B. Flusin, *Miracle et histoire dans l'œuvre de Cyrille de Scythopolis* (Paris: Études Augustiniennes, 1983), 13–15.

42 "Vie de Sabas," *c.* 15–16, ed. Schwartz, 98–100. The *wadi* or *oued* is a river that only flows in times of rain; in the Judean desert, essentially a limestone plateau which at some point was probably humid, the *wadis* eroded deep ravines by karstification, the slopes are riddled with grottos.

> he was their head (*higumenos*), their guide and their pastor. He started by building a tower at the top of the bank, at the north of the ravine after where it bends, in order to take possession of this place that was unoccupied. Then, by the grace and with the help of the Holy Spirit which was guiding him, he began establishing the lavra. He built a small oratory in the middle of the ravine, in which he established a dedicated altar. Whenever he received a visit from a stranger who had been ordained priest,[43] he had him celebrate mass.

The process is thus clearly set out: since Sabas was their *higumenos*, the gathering of the disciples formed an informal institution; he gave it a more defined shape by building a tower and then an oratory endowed with an altar; this building was equally intended to mark his territory in space.

Tracing Sabas' successive foundations would be laborious, as they constitute a veritable system of at least seven establishments, several monasteries being intended to shelter the future inhabitants of the lavras – this was a network of *kellia* connected by ways (in the original sense of the word) to a centre with communal buildings, in which the *kelliots* would gather for prayer, offices and meals on Saturdays and Sundays. This system set itself in a controlled and well-defined space.[44]

At the very same time that Sabas was building his system of the lavra – which can be seen as the ultimate evolution of the groupings of hermits that appeared in Egypt, and with the most promising future of anything that was not strictly cenobitic monasticism in Byzantine Christianity – a certain Theodosius, another Cappadocian, known to posterity as Theodosius the Cenobiarch, established what would appear to be the greatest monastery of the Palestinian desert. It was situated on the plateau east of Bethlehem, not very far from Sabas' lavra. The life of the monks there was organised with explicit reference to Basil of Caesarea.[45]

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43 He himself would end up being ordained a priest in 482. The passage quoted can be found in the "Vie de Sabas," *c.* 16, ed. Schwartz, 100.

44 For more on this spatial delimitation, see M. Kaplan, "L'espace et le sacré à Byzance d'après les sources hagiographiques," *Cristianità d'Occidente e cristianità d'Oriente* (*secoli VI–XI*), *Settimane di Studi sull'Alto Medioevo* 51 (Spolète, 2004), 1076–1077, reprinted in *Pouvoirs, Église et sainteté à Byzance. Études sur la société byzantine* (Paris: Publications de la Sorbonne, Les Classiques de la Sorbonne 3, 2011), 384.

45 "Vie de Théodosios par Théodore de Pétra" (BHG 1776), *c.* 20, *Der heilige Theodosios,* ed. H. Usener (Leipzig: Teubner, 1890), 50–53. Cyril also wrote a much shorter Life of Theodosius: "Vie de Théodosios par Cyrille de Scythopolis" (BHG 1777), *Kyrillos von Skythopolis*, ed. Schwartz, 235–241.

Even more than in Egypt, monasticism in the Judean desert played a major role in the life of the Church. From the very start, Euthymius seems to have established strong links with the Church of Jerusalem. After Chalcedon, which promoted Jerusalem to the rank of patriarchate, he supported the Chalcedonian Juvenal (who was bishop from 422, and patriarch until 458) against the other monks of Palestine.[46] Subsequently, Sabas and Theodosius joined the government of the Church of Jerusalem: in 492 they were placed at the head of the lavras and monasteries, and given respectively the titles of archimandrite of the lavras and archimandrite of the monasteries for the entire diocese.[47] In 516, Sabas and Theodosius organised an assembly of monks in Jerusalem that prevented Emperor Anastasius (491–518) from naming a monophysite patriarch.[48] The patriarch repeatedly sent Sabas to Constantinople. In short, Palestinian monasticism became a genuine institution and Sabas its leader.[49]

As for monasticism in the maritime region, from Gaza to Acre, it was even further under Egyptian influence. In this region, monasticism developed around Gaza's port Maiuma,[50] which had been much more rapidly Christianised. Half way through the fifth century, a definite monastic quarter existed between Maiuma and Gaza, encompassing a large number of establishments and broadly described as a lavra. This monasticism was staunchly monophysite. In this region too, monasticism was predominantly institutionalised and spatially defined and defining.

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46 For more on the revolt of the anti-Chalcedonian monks of Palestine, see L. Perrone, *La chiesa di Palestina e le controversie cristologiche: dal concilio de Efeso (431) al secondo concilio di Costantinopoli (553)*, Testi e ricerche di scienze religiose 18 (Brescia: Paideia, 1980), notably 89–103. These monks were monophysite and also opposed to the canon 4 of the Council, which submitted the monasteries to the bishops.

47 "Vie de Sabas," *c.* 30, ed. Schwartz, 114–115 and *c.* 65, ed. Schwartz, 166.

48 Ibid., *c.* 57, ed. Schwartz, 152–158; the Life contains the text of Sabas and Theodosius' letter to Anastasius which shows that Cyril had authentic documents at his disposal.

49 To quote the title of the work by J. Patrich, *Sabas, Leader of Palestinian Monasticism: A Comparative Study in Eastern Monasticism, Fourth to Seventh Centuries* (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1995).

50 For the most recent publication of archeological diggings (nowadays almost impossible), see R. Elter & A. Hassoune, "Un exemple de continuité entre les IV^{e} et VIII^{e} siècles: le cas du monastère de Saint-Hilarion à Tell Umm el-'Amr," in *Le Proche-Orient de Justinien aux Abbassides, peuplement et dynamiques spatiales*, ed. A. Boruta et al., Bibliothèque de l'Antiquité Tardive 19 (Paris, 2011), 187–204. Cf. also B. Lesieur, "Le monastère de Séridos sous Barnasuphe et Jean de Gaza: un monastère conforme à la législation impériale et ecclésiastique?", *Revue des Études Byzantines* 69 (2011), 5–48.

3 Syria

In this way we reach Syria.[51] Over the course of the fourth century, numerous ascetics would dwell there, living among the population, particularly in Antioch. Retreat from the world, through distance or through a fence that could take on the form of reclusion, was not imposed until the end of the century. Once again, we rely upon the perspective imposed by the main source, the Metropolitan Theodoret of Cyrus, in his *History of the Monks of Syria*, completed in 444,[52] as well as upon the Rules that his contemporary, Rabbula, bishop of Edessa, sought to impose upon the monks of Mesopotamian Syria.[53] Nevertheless, it is in Syria that the last oppositions to institutionalisation were most keenly manifested. This is where we find the *boskoi*, the grazing monks, the dendrites, who sought to live in the trunk of a hollow tree, and generally speaking those who sought to live in the fresh air (ὑπαίθρος). Let us single out two of the most extraordinary examples of such a radical refusal of institutionalisation. The first is that of the Holy Fool, the *salos*, who simulated madness in order to save souls; the mocking and punishments that he suffered constituted his asceticism. Its archetype, at least according to surviving sources, is Symeon of Emesa, who appears to have lived in the second half of the sixth century.[54] Following a long sojourn with a companion in the desert as a *boskos*, he exercised his gifts in Emesa, where he

51 In addition to the classic by P. Canivet, *Le monachisme syrien selon Théodoret de Cyr,* Théologie historique 42 (Paris: Beauchesne, 1977), we rely here upon the masterpiece by P. Escolan, *Monachisme et Église. Le monachisme syrien du IV^e^ au VII^e^ siècle: un monachisme charismatique*, Théologie historique 109 (Paris: Beauchesne, 1999).

52 Théodoret de Cyr, *Histoire des moines de Syrie,* ed. and trans. P. Canivet & A. Leroy-Molinghen, Sources chrétiennes 234 and 257 (Paris: Cerf, 1977–1979).

53 These appear in A. Vööbus*, Syriac and Arabic Documents regarding Legislation relative to Syrian Asceticism* (Stockholm; Etse, 1960). We cannot expand upon Syriac monasticism here, but for this recommend the excellent *Le Monachisme syriaque*, ed. F. Jullien, Études syriaques 7 (Paris: Geuthner, 2010); and particularly with respect to the relations between monks and hierarchy, the very meticulous study by O. Ioan, "Controverses entre la hiérarchie ecclésiale et les moines dans le christianisme syriaque," ibid., 89–106.

54 "Vie de Syméon Salos" (BHG 1677), *Vie de Syméon le Fou et Vie de Jean de Chypre*, ed. & trans. A.J. Festugière & L. Rydén, Institut français d'archéologie de Beyrouth, Bibliothèque archéologique et historique 95 (Paris, 1974). The Life is the work of another metropolitan, Leontius of Neapolis. For more on the latter and on Symeon Salos, see V. Déroche, *Études sur Léontios de Néapolis*, Studia Byzantina Upsaliensia 3 (Uppsala: Uppsala Universitet, 1995). See also D. Krueger*, Symeon the Holy Fool: Leontius's Life and the Late Antique City*, The Transformation of the Classical Heritage 25 (Berkeley: University of California Press, 1996). Symeon was also known on the Syriac side: L. van Rompay, "The Syriac Version of the 'Life of Symeon Salos'. First Soundings," *Byzantion* 57 (1987), 381–398.

lived on the streets, with neither institution nor roof over his head. When he died his body could not be found, so that no cult could develop.

The most significant example, however, is that of the stylites:[55] those holy men who climbed atop pillars, where more often than not they lived without any shelter, and who only ever climbed down to move to a higher pillar. The first was Simeon the Elder, who in 459 died on his pillar on Mount Coryphaeus, north of Aleppo.[56] Starting off as an ordinary monk in Mesopotamian Syria, Simeon decided to settle upon the summit of Mount Coryphaeus, where he shut himself away behind an enclosure, a *mandra*, a word that in Syriac refers to an enclosure for ewes. He initially lived with a rope attached around his foot, before having three, four or five columns successively installed, the last one of which reached some eighteen metres high. He lived alone in the middle of the *mandra*, which was forbidden to women, and where his disciples would come to pay him visits. No sooner had he passed away than the patriarch of Antioch sought to bring the relic into his city. However, he was unable to carry the pillar away. Instead, an imposing sanctuary was built around it, a gigantic quadruple basilica. This came to be one of the most visited pilgrimage sites in the East, certainly until the twelfth century, with a monastery and places of reception for the pilgrims – everything that Simeon had refused when alive.[57]

His first disciple known to hagiography,[58] Daniel, also a Syrian, went to Constantinople and ended up climbing a pillar some fifteen kilometres north of the capital, on a hill that dominated the Bosphorus. The flood of visitors very quickly presented Emperor Leo I with a problem of public

55 Overall survey by J.M. Sansterre, "Les saints stylites du V^e^ au XI^e^ siècle, permanence et évolution d'un type de sainteté," in *Sainteté et martyre dans les religions du Livre*, ed. J. Marx, *Problèmes d'histoire du christianisme* 19 (1989), 33–45.

56 There is a study of the hagiographic dossier in B. Flusin, "Syméon et les philologues ou la mort du stylite," in *Les saints et leur sanctuaire à Byzance: Textes, images et monuments*, ed. C. Jolivet-Lévy, M. Kaplan & J.P. Sodini, Byzantina Sorbonensia 11 (Paris: Publications de la Sorbonne, 1993), 1–23.

57 M. Kaplan, "L'espace et le sacré à Byzance d'après les sources hagiographiques," in *Cristianità d'Occidente e cristianità d'Oriente* (*secoli vi–xi*), *Settimane di Studi sull'Alto Medioevo* 51 (Spolète, 2004), 1085–1091 (= *Pouvoirs, Église et sainteté*, 390–395). For the importance of the complex that was created after the saint's death, see the most recent work by J.P. Sodini et al., "Qal'at Sem'an et son environnement: essai de synthèse," *Annales Archéologiques Arabes Syriennes*, 45–46 (2002–2003), 345–358; and D. Piéri, "Saint-Syméon-le-Stylite (Syrie du Nord): Les bâtiments d'accueil et les boutiques à l'entrée du sanctuaire," *Comptes rendus de l'Académie des Inscriptions et Belles-Lettres*, nov.–déc. 2009 (Paris, 2010), 1393–1420.

58 "Vie de Daniel le Stylite" (BHG 489), *Les saints stylites*, ed. H. Delehaye, Subsidia Hagiographica 14 (Bruxelles: Société des Bollandistes, 1923), 1–94.

order. Despite Daniel's reproaches, the emperor forced him to build a monastery up against the *mandra* wall, along with a *xenodochium* for the pilgrims.[59] This was not all. Daniel, like Simeon and so many ascetics before him, refused to be ordained: should the patriarch wish to ordain him, he would have to climb the ladder up to his lodging-place to do so. Regardless, the patriarch Gennadios ordained him at a distance and Daniel found himself incorporated into the hierarchy. Indeed, Daniel eventually climbed down his pillar to take leadership of the demonstration that in 476 overcame the monophysite usurper Basiliskos.[60]

By the end of the fifth century we have come full circle with the Life of Simeon Stylite the Younger.[61] Simeon the Elder's sanctuary having become monophysite, a kind of rival twin appeared, Simeon Stylite the Younger on the Admirable Mountain, between Antioch and the sea, quite symmetrically to the Elder in relation to the great city (see Map 3). Simeon is portrayed as a child prodigy, who climbed his first pillar at the age of seven. However, prior to having his definitive pillar raised, near the top of the mountain, he had a monastery built, in the middle of which he took his stance. In short, the stylite way of life was finally normalised within an institution linked from its very start to the pillar.[62]

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59 M. Kaplan, "L'espace et le sacré dans la Vie de Daniel le Stylite," in *Le sacré et son inscription dans l'espace à Byzance et en Occident. Études comparées*, ed. M. Kaplan, Byzantina Sorbonensia 18 (Paris: Publications de la Sorbonne, 2001), 199–217 (= *Pouvoirs, Église et sainteté*, 317–343); id., "L'espace et le sacré à Byzance," 1094–1097 (= *Pouvoirs, Église et sainteté*, 398–400).

60 In order to re-establish Zenon, who was himself a more moderate monophysite, Daniel himself was suspected of being monophysite on sole account of being Syriachophone. At his death, in 493, Emperor Anastasius, who was also a monophysite, organised a magnificent funeral, which constituted an imperial recognition of sainthood. As the Life never mentions Daniel's possible heterodoxy, this begs the question of the date at which it was written: see the most recent work by V. Déroche & B. Lesieur, "Notes d'hagiographie byzantine: Daniel le Stylite – Marcel l'Acémète – Hypatios de Rufinianes – Auxentios de Bithynie," *Analecta Bollandiana* 128 (2010), 283–295.

61 "Vie de Syméon Stylite le Jeune" (BHG 1689), *La vie ancienne de S. Syméon Stylite le Jeune*, ed. P. Van den Ven, Subsidia Hagiographica 32, 1 (Brussels: Société des Bollandistes, 1962). Symeon died in 592 and his Life dates from a few years later. For more on this Life, see V. Déroche, "La forme de l'informe: la Vie de Théodore de Sykéôn et la Vie de Syméon stylite le jeune," in *La vie des saints à Byzance: genre littéraire ou biographie historique?,* ed. P. Agapitos & P. Odorico, Dossiers byzantins 4 (Paris: École des Hautes Études en Sciences Sociales, 2004), 367–385.

62 Kaplan, "L'espace et le sacré à Byzance," 1091–1095 (= *Pouvoirs, Église et sainteté*, 395–398).

4 Constantinople

We have very few sources for Asia Minor at our disposal,[63] so we move on to Constantinople. The situation here was complex and the phenomena of institutionalisation particularly important, as it was the seat of a political power that could not tolerate disorder.[64] The reality is sometimes difficult to discern, so much has subsequent hagiography rewritten history in order to impose upon it order and an institutional framework.[65] In so doing it has concealed the gyrovague monks[66] who populated Constantinople's streets, whether isolated or in little groups, and who inflamed the crowds through their theological quarrels. The new capital drew people from all over the Empire and particularly from the East, and some monasteries were truly cosmopolitan. Nevertheless, monasteries, whether within or outside of the walls of the city, were far from containing all of the monks. Isolated monks were numerous. Others formed very small groups living on the street, near a place of worship, establishing themselves in service of a *martyrion* or a small assistance institutions. These groupings would take shape, scatter, regroup in another form, with a rhythm that the sources were unable to follow; such indicates very weak institutionalisation. According to hagiographic tradition, the first monk of the capital was Isaac, a Syrian hermit who came to fight against Arianism. Following the ascent of Theodosius I (381), a powerful figure offered him a territory in the vicinity outside Constantine's wall – in the area of Psamathia – to establish his *kellion*, from where he would frequently go into town. From 382–383 he was flanked by the rich officer Dalmatios and his son Faustos. Thus institutionalisation happened extremely quickly, as with their control of space, for they built a monastery of which Isaac was *higumenos* until his death in 405. He was

63 For Asia Minor and Constantinople, see V. Déroche, "La vie des moines: les sources pour l'Asie Mineure et les Balkans, *ca* 300–1000 AD," in *La vie quotidienne des moines en Orient et en Occident* (*4^e^ –10^e^ s.*). I, *L'état des sources*, ed. O. Delouis & M. Mossakowska-Gaubert (Cairo, forthcoming).

64 The foundational article on monasticism in the capital is that by G. Dagron, "Les moines et la ville." See also a convenient summary by B. Flusin, "L'essor du monachisme oriental," *Histoire du Christianisme*, vol. 3 (Paris, 1998), 592–604. It is a point recently covered by P. Hatlie, *The Monks and Monasteries of Constantinople, c. 350–850* (Cambridge: Cambridge University Press, 2007).

65 See the analysis of hagiographic and historiographic sources by Dagron, "Les moines et la ville," 230–246.

66 For more on this phenomenon, see D. Caner, *Wandering, Begging Monks: Spiritual Authority and the Promotion of Monasticism in Late Antiquity*, The Transformation of the Classical Heritage 33 (Berkeley: California University Press, 2002).

succeeded by Dalmatios, who was soon ordained priest. When he died in 440, leaving the monastery to his son, the construction of Theodosius II's wall incorporated the establishment into the town. The monks were immersed in the capital's population, participating in all the movements which agitated a newly arrived population, made unstable in the name of the fight against heresy.

The Council of Chalcedon fought against both monophysitism and the anarchy instigated by the monks; it was hoped that by placing them in submission to the bishops they would be brought into line. During the council, monks and *higumenoi* petitioned on behalf of one or other camp. Thus, monks were included in the institutional system, to the degree that they came to explain themselves before the supreme institution, the council, an institution summoned and controlled by the Emperor. We may note that among the monophysite petitioners, only three were *higumenoi*, that is to say at the head of an actual institution, seven were "unknown", thus gyrovague, and the others were *memoritai*, that is serving in a relic's place of conservation, either alone or in a small group.[67] Amidst the monophysites' adversaries we find a certain number of those who had intervened against Eutyches, the *higumenos* of an important monastery and the capital's principal monophysite,[68] in the course of a permanent synod in 448. All were described as archimandrites, that is, heads of institutions grouping monks, primarily from cenobitic monasteries, designated by the name of their founder, or in the case of two of them, by the origin of their monks – that is, as Syrians and Egyptians.[69] We may note that none of these monasteries was located within Constantine's wall; rather, most were located between this and Theodosius II's wall, for example that of Dalmatios, while the others were in the suburbs. One of the most famous and probably the most powerful, or in any case one of the most fully documented, is that of the Acemetes.[70] Originally from Syria, they nevertheless, under Marcel's

67 This refers to the session of 17th October 451; the list was reproduced by Flusin, "L'essor du monachisme oriental."

68 This monastery was located near Saint Mokios. See R. Janin, *La Géographie ecclésiastique de l'empire byzantin*, I: *Le siège de Constantinople et le patriarcat œcuménique*, vol. 3: *Les églises et les monastères* (Paris: Institut français d'études byzantines, 1969).

69 This latter was situated in the Blachernae quarter, then outside the walls (until the Avar attack of 626).

70 "Vie d'Alexandre l'Acémète" (BHG 47), *Patrologie Orientalis,* ed. E. De Stoop, 6.5, no 30 (Paris, 1911; rev. Turnhout: Brepols, 1980), 645–702; "Vie de Marcel l'Acémète" (BHG 1027 z), ed. G. Dagron, *Analecta Bollandiana* 86 (1968), 287–321. In addition, "Vie d'Hypatios par Kallinikos" (BHG 760), ed. and trans. G.J.M. Bartelink, Sources Chrétiennes 177 (Paris: Éditions du Cerf, 1971) dedicates a long chapter to him (*c.* 41, 242–246). For more on the

higumenate, chose to support the Council of Chalcedon. The Life of Marcel shows us an organised institution, with not only bakers, but also an *econome* (steward) and a *sekretarios*. The library that was put together was famously well stocked. Their influence was not limited to Constantinople, where they contributed to the foundation of the patrician Stoudios; it can be seen as far away as the Burgundian kingdom, in the course of King Sigismond's foundation of the monastery of Saint-Maurice, in 515.[71]

5 Legislation

The very existence of the monks and their establishments presented the Church with a problem. So long as the monks refused priesthood they remained laymen – as had originally been most often the case – to such an extent that refusing priesthood is a topos of hagiography. Consequently, they did not fall within the bishop's authority as the rest of the clergy did, and were always opposing it. The agitation that they fomented in Constantinople compelled the imperial power to take measures, with five canons made at the Council of Chalcedon.[72] Thus monasticism, undoubtedly in self-defence, found itself with an institutional consecration, despite the Council never defining what a monastery was nor conferring upon it an ecclesiastical status. As part of these measures, the Council submitted the monasteries to the authority of the local bishop.

It is not until Justinian that we see the creation of a true legislative corpus concerning monasteries, a dazzling, albeit constraining, expression of their institutionalisation in the heart of Byzantine society. It would take too long to set out all these measures here, but we may note that this emperor made official the existence of an *exarch,* or archimandrite of the monasteries, something that had already happened in Constantinople and in other towns such as Jerusalem.[73] Not without some hesitation, he caused the monasteries'

acemetes, see B. Flusin, "L'essor du monachisme oriental," 602–604; and P. Blaudeau, *Alexandrie et Constantinople* (*451–491*). *De l'histoire à la géo-ecclésiologie*, Bibliothèque des Écoles françaises d'Athènes et de Rome 327 (Rome: École française de Rome, 2006), notably 481–487.

71 See the most recent work by A.M. Helvétius, "L'abbaye de Saint-Maurice d'Agaune dans le Haut Moyen Âge," *Actes du colloque Politique, société et construction identitaire: autour de saint Maurice,* ed. N. Brocard, F. Vannotti & A. Wagner (Saint-Maurice, 2012), 111–129.

72 See the translation of these canons in Dagron, "Les moines et la ville," 273–274.

73 Justinian, novel 133, *c.* 4, ed. R. Schoell & W. Kroll (Berlin, 1963), 671–672.

patrimony to enter within common ecclesiastical law, making it in principle completely inalienable; yet in light of the state of the ecclesiastic fortunes, he found himself constrained to authorise, with a host of precautions, alienations in order to ensure the foundations' survival.[74]

In short, Justinian's reign marked an important stage in the institutionalisation of monasticism. Generally speaking Justinian's legislation reinforced the monasteries' submission to episcopal authority. The attention that the emperor paid to the matter of monastic assets shows that some of these establishments already possessed a considerable fortune. However, for lack of written records or epigraphy, we cannot know the effect of these upon space. Nevertheless, monasteries were extremely visible in urban spaces, starting with the most important cities such as Constantinople, Alexandria and Jerusalem, as well as in their suburbs, such as the Judean desert and the road from Jerusalem to the Jordan, which formed the monastic back-country of the Holy City.

6 The Later Period

The subsequent period brought radical change. The provinces that had supplied us with most information now passed under Arab domination. With respect to our object of study, we face a near total lack of data until the iconoclast period (730–843). For this period, the only sources to have reached us are those of the iconodules, whereas we only know of the iconoclasts through their opponents. Nevertheless, this conflict resulted in a heightened role for monks within the ecclesiastical institution, where they formed a pressure group. Indeed, whether as a body or through eminent representatives, monks appear on three occasions: they were present during the Council of Hieria of 754, which defined the iconoclast doctrine; they were present at the second Council of Nicea of 787, which first re-established iconodulism;[75] and one of them was summoned by Emperor Leo V prior to his re-establishment of iconodulism in 815. In 787 there were 132 *higumenoi* against 365 bishops; ten or so played an important role, but they were carefully kept away from any sessions where theological decisions were taken. In 815, Leo V consulted several

74 For more on this, see M. Kaplan, *Les hommes et la terre à Byzance du VI^e^ au XI^e^ siècle: propriété et exploitation du sol,* Byzantina Sorbonensia 10 (Paris: Publications de la Sorbonne, 1992), 174–177.

75 M.F. Auzépy, "La place des moines à Nicée II (787)," *Byzantion* 58 (1988), 5–21 (= *L'histoire des iconoclastes*, Bilans de recherche 2; Paris: Association des amis du Centre d'histoire et civilisation de Byzance, 2007), 45–57.

iconoclastic metropolitans and appointed over them probably the most famous *higumenos* of the period, Theodore the Studite, Studios being a major monastery in Constantinople. He may have consulted several other monks too. Most of the Lives that recount this event converge on one point:[76] it was the metropolitans that led the resistance, probably about ten of them if we are to combine the different sources, and it was not until the last one had spoken that Theodore the Studite could express himself.[77] In 843, the new patriarch chosen by the Regent Theodora had to resist the pressure exerted by the iconodule monks, who sought to prevent him from holding on to a portion of the episcopal hierarchy; this would have placed him entirely in the hands of the monks and deprived him of any authority. The ecclesiastical hierarchy did keep the upper hand, even though the influence of the monks' *tagma* (which in the military sense indicates a contingent but here means a corporation) did grow.[78]

After 787, even if the patriarch Tarasios was able to keep the monks on the fringes of the council, they could count upon the unconditional support of the Regent Irene, so that this period was a decisive turning-point both for the emergence of the monastic institution and for monastic placement. In 798, having become sole empress, Irene appointed Theodore *higumenos* of the imperial monastery of Studios in Constantinople, from which the monk would be named "the Studite." Theodore came from a family of high-serving dignitaries that founded the monastery of Sakkudion on a family estate, Boskytion, located on a hill that dominated the southern shore of the Propontid. Even if discernible examples exist from as early as the first iconoclasm, this is the first documented case of an aristocratic family dedicating a portion of its assets to

76 M. Kaplan, "Le saint, l'évêque et l'Empereur: l'image et le pouvoir à l'époque du second iconoclasme d'après les sources hagiographiques," in *Les images dans les sociétés médiévales: pour une histoire comparée*, ed. J.M. Sansterre & J.C. Schmitt, Bulletin de l'Institut Historique belge de Rome 69 (1999), 186–188 (= *Pouvoirs, Église et sainteté*, 168–70); id., "L'évêque à l'époque du second iconoclasme," in *Monastères, images, pouvoirs et société à Byzance*, ed. M. Kaplan, Byzantina Sorbonensia 23 (Paris: Publication de la Sorbonne, 2006), 192–194 (= *Pouvoirs, Église et sainteté*, 232–234). These publications contain the references to the saints' lives that bring the role of the metropolitans to light.

77 "The Vie de Théodore Stoudite par Michel le Moine" (BHG 1754) (Vie B), PG 99, *c.* 32, col. 149, alone admits that Theodore spoke to him last, thus ascribing him an important rôle: In the event of the metropolitans not having had the courage of opposing the emperor, he did so.

78 There is a considerable bibliography on 843. G. Dagron, "L'iconoclasme et l'établissement de l'orthodoxie (726–847)," in *Histoire du Christianisme*, vol. 4 (Paris: Desclée, 1993), 159–162, provides us with a remarkable summary of Methodius' victorious struggle, supported by a hermit from Bithynia, Ioannikios, against the extremist monks led by the Studites.

the construction of a monastery. The future chronicler Theophanes, another famous aristocrat, whose Life[79] seems credible on this point, successively founded several monasteries on his lands in the same period.[80] All in all, aristocrats marked their territory by founding powerful and richly endowed monasteries on their lands.

Theodore's work was not limited to the foundation of Sakkudion, the restoration of Studios, and the outline of a network which did not survive after him. Theodore was aware that if monks wanted to resist the abuses of the imperial power and ecclesiastical hierarchy that pursued him at every turn, they would need not only to become powerful on an economic level, but especially to be organised. The Theodorian corpus is considerable, and spread over numerous works.[81] His rule, the *hypotyposis*, was composed following his death, probably after 843.[82] Theodore extolled a strict cenobitism under the physical and spiritual authority of the *higumenos*. This official provided his monastery with a minutely regulated organisation, in which each monk would exercise a precise function or diaconate; at Studios[83] this work could no longer be agricultural as it was at Sakkudion, but instead was crafts based, the most elaborate work being the copying of manuscripts in a prosperous *scriptorium*, where each would be assigned a specific task. Work became a form of asceticism; it was the monk's mass, for a monk who, more often than not, was not a priest. Finally, Theodore advocated absolute poverty for each monk, even though the monastery as an institution was rich and a portion of the monks came from the highest echelons of aristocracy: no monk might own anything for himself, and clothes were exchanged every week with no consideration of condition, nor even for size, so that clothes were called "the exchanges."

Theodore's ambition was undoubtedly not confined to imposing these measures upon the monasteries dependent upon him. The influence of Theodore's writings can be measured by the considerable number of manuscripts of his works that have been preserved; these came to inspire Athanasius the Athonite, and later the founders of the Evergetis monastery. Nonetheless, most of the monasteries kept on living according to their own rule, and even those

79 "Vie de Théophane" (BHG 1787 z), *Methodii patriarchi Constantinopolitæ: Vita Sancti Theophani*, ed. B. Latyšev, Mémoires de l'Académie de Russie, 8th Ser. 13, 4 (Moscow, 1918).

80 Ibid., *cc.* 21–22, 15–16.

81 See Déroche, "La vie quotidienne des moines."

82 Exists in two versions: A: *Opisanie liturgičeskih'Rrykopisej hranâŝčihsâ v Bibliothkah' Pravoslavnago Motoski*, I: *Typika,* ed. A. Dimitrievsky (Kiev, 1895); B: PG 99, col. 1704–1720.

83 Studios was an imperial monastery, most certainly endowed with revenues and lands.

who took inspiration from Theodore did not respect his intransigent cenobitism. The term "Studite reform," employed by Gilbert Dagron, demands careful use.[84]

Instead of monasteries regrouping within a confederation of which Theodore perhaps dreamt, they settled in the mountains, the main one of which, Mount Olympus of Bithynia, dominated the south of the Bursa metropolis. However, no institution federating the Mount Olympus monks appears in the sources. Other mountains also existed at around the same time as places for monks: Mount Kyminas, east of Bithynia, and Mount Latros, in the Miletus region.[85]

7 Mount Athos

The most famous of all is without a doubt that of Mount Athos (see Map 4). In the ninth century, this peninsula, the most eastward from Chalkidiki and extremely mountainous, was almost entirely deserted. It was used as grazing land for livestock belonging to peasants who lived nearby, in compliance with the status of abandoned lands that had become unproductive for the tax administration.[86] The first credible document on the subject is the Life of Euthymius the Younger.[87] He fled from being a peasant soldier to settle in Olympus in 841. There he heard speak of Mount Athos, which was far more favourable to the eremitic life than Olympus with its crowds of pilgrims. Towards 860, Euthymius left for Athos; subsequent to several sojourns there, punctuated by ascetic exploits such as a period of stylism in Thessalonica and the foundation of monasteries in the heart of Chalkidiki, he withdrew alone to die on the peak of Mount Athos. It seems that in this period there were not yet any monasteries on the mountain, but instead simply colonies of hermits more or less isolated, or living in small anchoritic groups. Here we finally come to the

84 Cf. above n. 78.

85 A.M. Talbot, "Les saintes montagnes à Byzance," in *Le sacré et son inscription dans l'espace à Byzance et en Occident. Études comparées*, ed. M. Kaplan, Byzantina Sorbonensia 18 (Paris: Publications de la Sorbonne, 2001), 266; R. Janin, *Géographie ecclésiastique de l'empire byzantin*, vol. 2: *Les églises et les monastères des grands centres byzantins* (*Bithynie, Hellespont, Latros, Galèsios, Trébizonde, Athènes, Thessalonique*) (Paris: Institut français d'études byzantines, 1975), 217–220; T. Wieland, *Der Latmos* (Berlin, 1913).

86 Cf. *Actes de Lavra* I, *Des origines à 1204*, ed. P. Lemerle et al., Archives de l'Athos 5 (Paris: P. Lethielleux, 1970), nos 2 and 3 (941), 91–95.

87 "Vie d'Euthyme le Jeune" (BHG 655), ed. L. Petit, *Revue de l'Orient Chrétien* 8 (1903), 168–205 (= *Bibliothèque hagiographique orientale*, vol. 5, Paris: Picard, 1904, 14–51).

Athonite documents, with the first preserved acts of the institution that ruled Mount Athos, the Protaton,[88] where the Protos resided – that is the elected head of what was beginning to resemble a community. Through a *sigillion* of June 883,[89] Basil I (867–886) guaranteed the monks of Mount Athos and the monastery of Kolobu against any charge or humiliation that they might suffer at the hands of the officials or the inhabitants of the Hierissos region.[90] The importance of this act lies in its recognition of the Athonite community as having legal status, with representatives who would implement the act. In 908, Leo VI (886–912) confirmed the arrangements made by his father through the most solemn of acts, a chrysobull.[91] Andrew, described as "the first hesychast" of Mount Athos and representative of all its monks,[92] left for Constantinople for this very purpose. The qualifier "*protos*" (πρῶτος) would thereafter refer to this head [of the monks]; as for the monks, they were simply designated as "all [of them]." Thus, the existence of a *protos* marked a real degree of institutionalisation, and the ascetics of Mount Athos (τῶν ἐν τῷ ὄρει τοῦ Ἄθωνος ἀσκητῶν) would constitute a party in the legal sense (μέρος).

All that remained to do was to define the Athonite institution in space, that is to say to forbid access to Mount Athos to all but the monks and those authorised to come, and to plot its limits. This is what happened in 942–943, and it is a limit that is still in place today. Nevertheless, it was not until the statutory *typikon* of Constantine IX Monomachos,[93] in 1045, that the seat of *protos* in Mount Athos appeared, under the name of lavra of Karyes, where, as the text says, the *higumenoi* of the monasteries gathered as usual, thereby referring back to a more ancient settlement.

In addition to territory, the emperor endowed Mount Athos monks with a statute. Before that of Monomachos, just mentioned, John I Tzimiskes had written an initial one in 972.[94] The circumstances surrounding it are interesting, for a conflict opposed the Athonite hermits to the Lavra monastery. The *protos* Athanasius sent a request to the emperor, who delegated Euthymius of Studios to go there. Euthymius sat with all the *higumenoi* of the mountain and

88 See the history of this institution in the publication of the acts: *Actes du Prôtaton*, ed. D. Papachryssanthou, Archives de l'Athos 7 (Paris: P. Lethielleux, 1975).

89 *Actes du Prôtaton* no. 1, 177–181. A *sigillion* is an imperial act, but slightly less solemn than the chrysobull.

90 Hierissos is a small bishopric situated at the entrance of Mount Athos; the peninsula falls within its diocese.

91 Ibid., no. 2, 181–185.

92 This is the technical term designating the representatives of an institution: ἐκ προσώπου.

93 Ibid., no. 8, 216–232.

94 Ibid., no. 7, 202–216.

the general assembly of the brothers and decided between both parties. So here we have Mount Athos having become an institution endowed with an imperial regulation!

The 972 *typikon* reveals a major conflict between the Athonite hermits and Lavra, a foundation funded by Nicephorus Phocas for his friend Athanasius and himself, prior to his ascension to the imperial throne – in effect making of it an imperial monastery: indeed, Athanasius built a powerful monastery, investing for production, planning for a port and a *xenodochium* for its guests. The hermits' revolt was further caused by the multiplication of monasteries, although for the most part probably still of minor importance; these were almost certainly mainly small groupings of hermits. The only other important known foundation for the period, which preceded Lavra, is that of Saint Nicephorus of Xeropotamu, prior to 956. A further foundation, but far less important and subsequently given to Lavra, was that of Bouleuteria, which predated 960[95] and thus again precedes Lavra's foundation.

8 Lavra and Governance

Lavra profoundly changed Mount Athos, and more generally the history of Byzantine monasteries as institutions. Athanasius, who was born into a family of Trebizond's minor aristocracy,[96] was initiated to the monastic life at Mount Kyminas by Michael Maleinos,[97] the offspring of one of Asia Minor's most illustrious and rich families. It is here that he came to know the saint's nephew, Nicephorus Phocas. In fact, he gave his own account of the steps that led him to found Lavra at the start of the *typikon* that he gave his monastery between 973 and 975.[98] The founding, financed by Nicephorus Phocas to the tune of six pounds of gold, was intended to welcome both of them, but Nicephorus became emperor, turning this monastery built at his expense into an imperial monastery. Athanasius left three documents to organise the foundation: a *hypotyposis* (a rule), probably given as early as 963 at the time of the founda-

95 *Actes de Lavra*, I, no. 15 (1010), 139–141.

96 All that we know about Athanasius prior to the foundation of Lavra is drawn from his two Lives: *Vitæ duæ antiquæ sancti Athanasii athonitæ*, ed. Noret, 3–124 and 127–213.

97 "Vie de Michel Maléïnos" (BHG 1295), "Vie et office de S. Michel Maléïnos," ed. L. Petit, *Revue de l'Orient Chrétien* 7 (1902), 549–568 (= *Bibliothèque Hagiographique Orientale*, vol. 4, Paris: Picard, 1903, 7–26).

98 *Die Haupturkunden für die Geschichte der Athosklöster*, ed. P. Meyer (Leipzig, 1894; reprinted by Damant Media Corporation, 2005), 102–104.

tion;[99] the afore-mentioned *typikon*;[100] and the founder's will, dating from after 993.[101] In a way much was borrowed from Theodore the Studite and they shared a similar general outlook concerning the *higumenos*' authority, the organisation of work into diaconates, and the individual poverty of the monks. Yet the differences were great, for – as was already the case in many places, for example in Mount Kyminas or Latros – the term used was lavra, not monastery, and Athanasius authorised the existence, within the dependency of Lavra, of hesychast *kellia* grouping two or three monks, a number that he sought in vain to limit. In principle he forbade the acquisition of lands outside of Mount Athos; however, this was incompatible with the size of his foundation, so that as early as 964 he received the imperial monastery once founded at Peristerai by Euthymius the Younger, and in 989 the patriarchal monastery of Gomatou, these monasteries being given with all of their property. Athanasius and his followers defined the territory both by buying or being the recipient of several smaller establishments, and by acquiring in Chalkidiki more extensive lands. Iviron, founded in 978 by a family of powerful Georgian aristocrats, developed in a very similar fashion.

Lavra seems to have led the Byzantine monastic institution to a new stage. In his *typikon*, Athanasius fixed the number of monks and *kelliots* at eighty; were Athanasius to die in the lifetime of Nicephorus, the latter would name the monk designated by Athanasius as *higumenos*; after the death of both figures, Lavra "shall not be given to any lay or ecclesiastic person, nor even to a monk nor any being placed under the dependency of another monastery, but will remain free and autonomous (ἐλευθέραν εἶναι καὶ αὐτοδέσποτον)."[102] This last phrase is obviously an interpolation[103] that bestows a later status upon Lavra in 972.

99 Ibid., 130–140.

100 Ibid., 102–122.

101 Ibid., 123–130. Here is not the place to discuss these dates; see the most recent discussions in *Byzantines Monastic Foundation Documents, A Complete Translation of Surviving Founders' Typika and Testaments*, ed. J.P. Thomas & A. Constantinidès Hero, DOS 35, I, nos 11, 13 and 14 (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 2000).

102 Meyer, *Die Haupturkunden für die Geschichte der Athosklöster*, 106–107.

103 The oldest evidence of the *typikon* lies in a manuscript of Iviron dating from the sixteenth century, which Meyer used from an 1814 copy. However, two other manuscripts from the tenth/eleventh centuries exist, which may be close to the original. See *Actes de Lavra* I, 13–14, in which there is no mention of the interpolation. Indeed, in 1136 the by definition imperial monastery, founded by John II the Pantokrator, benefited from this privilege, which as we will see developed for private foundations from the 1070s. No acts previous to 1204 mention it. On the other hand, through a chrysobull of July 1079, Nicephorus III Botaniates recognised that Iviron was already free (ἐλεύθερος) and autonomous

If Lavra did indeed remain an imperial monastery, and it has to be said that this status was the most favourable possible and that the monks frequently made used of it, the status of self-governing appeared around a century later, with the *typikon* of the monastery of Christ Evergetis, located in a suburb of Constantinople. This monastery was founded by a rich aristocrat, Paul, on one of his properties, in 1048 or 1049. If Paul left us with a true ascetic *summa*, the *Evergetinos*,[104] he founded only a modest monastery. However, his successor Timothy turned it into a rich and prosperous establishment, to which he gave a *typikon*, probably in 1070, but with revisions.[105] This *typikon* influenced to various degrees practically all the subsequent *typika* of aristocratic foundations, essentially with respect to the monks' lives and internal organisation, to the extent that it has been described as a "reform" – although this does not mean that it is similar to the reform movements experienced in western monasticism. It was always the founder who decided whether or not to draw inspiration from the Evergetis, without any concerted movement instigated by a superior.

Chapter 12 of the *typikon* states that "this holy monastery will be free, independent of anyone and autonomous (ἐλευθέραν εἶναι τὴν ἁγίαν ταύτην μονὴν,

(αὐτοδέσποτον): *Actes d'Iviron* II, *Du milieu du XI^e siècle à 1204*, ed. J. Lefort et al., Archives de l'Athos XVI, no. 41 (Paris, 1990), 133. Following this chrysobull, which confirmed numerous privileges to the monastery and conferred an exemption from surtaxes upon it, the subsequent act considered the monastery to be imperial (no. 42, October 1080, due to Mount Athos' *protos*, ibid., 139); yet this is the only mention until the era of the Paleologues.

104 There is only an old edition available for this: *Ἐυεργετινὸς ἤτοι Συναγωγὴ τῶν θεοφθόγγων ῥημάτων καὶ διδασκαλίων τῶν θεοφόρων καὶ ἁγίων πατέρων* (Venice, 1787; reprinted Athens, 1983), 4 vols ; French translation N. Molinier, *Paroles et exemples des anciens: recueil ascétique de Paul surnommé Evergetinos*, 4 vols (Saint-Laurent-en-Royans: Monastère de Saint Antoine le Grand; La Bastide-d'Engras: Monastère de Solan, 2009–2010); English trans. Archev. Chrysostomos, Hierom. Patapios, Év. Ambrose, Év. Auxentios, Frère Chrysostomos, C. Kokenes, Sœur Lydia, J.V. Petropoulos, J.V. Rexine & Père G. Telepneff, *The Evergetinos, A Complete Text*, 4 vols (Etna, CA: Center for Traditionalist Orthodox Studies, 1988–2008).

105 "Le typikon de la Théotokos Évergétis," ed. and trans. P. Gautier, *Revue des Études Byzantines* 40 (1982), 5–101. We highly recommend consulting the studies made on this monastery and its period published by M. Mullet & A. Kirby, *The Theotokos Evergetis and Eleventh-Century Monasticism* (Belfast: Belfast Byzantine Texts and Translations, 1994); *Work and Worship at the Theotokos Evergetis* (Belfast: Belfast Byzantine Texts and Translations, 1997); *Founders and ReFounders of Byzantine monasteries* (Belfast: Belfast Byzantine Texts and Translations, 2007), 6, 1–3. A full study of the different stages can be found in the *Byzantine Monastic Foundation Documents*, II, 465–468.

ἀπὸ πάντων αὐτοδέσποτόν τε καὶ ἰδιοδέσποτον), and that it will be no-one's property, be he emperor, ecclesiastic or private individual."[106] Timothy drew upon the chrysobulls of the late emperors who ratified this status, and rejected any kind of placing into guardianship as part of *charistikè*, a donation contingent upon private individuals.[107] Such arrangements can be found in a large number of *typika* from this period and the following century. Next to private individuals, such as Michael Attaleiates,[108] or bishops, such as Manuel of Stroumitza in Macedonia and his monastery of the Theotokos Eleousa,[109] one comes across Irene Doukaina, wife of Alexios Komnenos and her foundation of the Theotokos Kecharitomene in Constantinople;[110] all had the same type of clause. Even the *typikon* of the Pantokrator of October 1136, definitely an imperial monastery as the text is signed by John II Komnenos, complies with this arrangement.[111] Thus we have here an extremely important evolution, which consolidated the strength of the institution that was the monastery: from the 1070s, monasteries founded by important men were autonomous, almost completely eluding the bishop's authority, except when it came to the installation of a new *higumenos*. The great monasteries became fully independent institutions.

Several of these institutions organised space in order to mark out their founder's authority. Let us limit ourselves to an emblematic case, that of the Theotokos of Petritzos, near Philippopolis, north of western Thrace, founded by a Georgian aristocrat, Gregory Pakourianos. Gregory, who promulgated his *typikon* in December 1083,[112] was a military man who had come to fight in the

106 *Typikon de l'Évergétis*, *c.* 12, 45.

107 For more on this procedure, see M. Kaplan, "Les monastères et le siècle à Byzance: les investissements des laïcs au XI[e] siècle," *Cahiers de Civilisation Médiévale* 27 (1984), 71–83 (= id., *Byzance. Villes et campagnes,* Paris 2006, Les médiévistes français 7, 123–137).

108 Cf. P. Gautier, "La diataxis de Michel Attaliate," *Revue des Études Byzantines* 39 (1981), 5–143, *c.* 14, 41. The same prohibition against any possible takeover may be found at *c.* 9, 33–35. The *diataxis* dates from April 1077.

109 "Le monastère de Notre-Dame de la Pitié en Macédoine," ed. L. Petit, *iraik* 6 (1900), 3–153, *c.* 18, 90. The *typikon* dates from between 1085 and 1106.

110 "Le typikon de la Théotokos Kécharitôménè," ed. P. Gautier, *Revue des Études Byzantines* 43 (1985), 5–165, *c.* 1, 29–31, with the same prescriptions against entrusting it to anyone. The *typikon* dates from between 1110 and 1116.

111 "Le typikon du Christ Sauveur Pantocrator," ed. P. Gautier, *Revue des Études Byzantines* 32 (1974), 1–145, conclusion, 127. We have mentioned this case above, n. 103. The monastery of Kecharitomene was indeed founded by the empress, but was never described as imperial; it may be that the properties it is ascribed, the list of which we do not have, come from Irene's own estate and not from the Emperor.

112 "Le typikon du sébaste Grégoire Pakourianos," ed. P. Gautier, *Revue des Études Byzantines* 42 (1984), 5–145.

Byzantine armies with a group of his compatriots in the 1060s; in return for his successes on the eastern borders he had received substantial property, yet had lost it following the defeat at Manzikert by the Turks (1071). Like other aristocrats, he reoriented himself towards the Balkans. In return for being close to Alexios Komnenos in the *coup* that installed the latter on the throne in April 1081, he was sent, with the title of "Grand Domestic of All the West," to fight the Normans, who had landed on the west of the peninsula, and also the Pechenegs, who were a more immediate threat to the property he acquired in western Thrace which in turn was increased by that of his brother Apasios, who died without an heir.

A direct heir was something that Gregory also lacked, so he made over the entirety of his fortune to the monastery that he founded. This landed fortune fell into three sections.[113] The first was located around Chrysopolis, in eastern Macedonia, on the lower valley of the Strymon, on the way of the Via Egnatia: it consisted of a monastery, the *kastron*[114] of Kaisaropolis, five villages with one equipped with two "old *kastra*," a domain, and two *xenodocheia*. The second group was organised around two towns, Peritheorion and Mosynopolis, described as *kastra*, and extremely prosperous thanks to the Via Egnatia that crossed them. The first only possessed one *aule* (a group of buildings used for crafts, for commerce, and for dwellings). At Mosynopolis, he owned lands and houses that he had built and others that he had bought, in addition to the *metochion*, a dependency of the monastery of Saint Georges on Mount Pappikion,[115] which he owned. In addition, he also owned the "village" of

113 So as to not weigh the notes down I am not referring back to each relevant passage of the *typikon*. See a remarkable and unsurpassed study with a map of the possessions drawn up by C. Asdracha, in P. Lemerle, *Cinq études sur le XI^e siècle byzantin* (Paris: Éd. du Centre national de la recherche scientifique, 1977), 115–191. For the urban aspect, see M. Kaplan, "Villes et campagnes à Byzance du VI^e au XII^e siècle: Aspects économiques et sociaux," *Città e campagna nei secoli altomedievali, Settimane di Studi sull'alto Medioevo 56* (Spolète, 2009), 495–536.

114 The term *kastron* designated any fortified agglomeration; it became synonymous with town (Thessalonica is sometimes described as a *kastron*) so long as it is fortified. The *typikon* implied that Pakourianos owned the whole of Kaisaropolis.

115 Mount Pappikion, which dominates Mosynopolis, south of the Rhodopes range, was a monastic mountain just like Mount Athos, yet whose every monastery lies in ruin today and of which no document has been preserved. It is the oldest mention we have of a monastery in such a location, although archeology shows that Mount Pappikion peaked in the eleventh to twelfth centuries: cf. N. Zèkos, *Παπίκιον Όρος/Mont Papikion* (Macédoine orientale, Kavala 2001), with bibliography.

Kanteia (a suffragan of the Traianoupolis metropolis) and the domain of Zaoutzes. In both cases, the towns were sufficient as defences. This was not the case in the heart of Pakourianos' estates where he founded his monastery around the village of Basilikis-Petritzos. The monastery itself was defended by a *kastron*, located within the boundaries of the village and carrying the same name as the monastery. All around, in this mountainous region of hemmed in valleys, relatively easy to defend from the north of the Rhodopes, he owned five other *kastra*, two of which protected the village of Stenimachos, at the junction of routes at the entrance to the Evros plain – which Gregory Pakourianos turned into a small town with a fair and an important *xenodochium* to shelter travellers and traders.[116] In addition, this territorial bloc contained four other villages, nine domains,[117] and four groupings of hermits that we do not dare describe as lavras; lastly, in an isolated position some thirty kilometres further south, there was a domain and two villages. If the combined body of assets of Chrysopolis and Peritheorion-Mosynopolis were above all intended to provide income, it is nevertheless obvious that the complex surrounding the Theotokos monastery was a territorial bloc, which Gregory Pakourianos set up for defense; it was the territory of the monastery, defined in space. We may note that the Petritsoni monastery, nowadays the Bachkovo monastery, has stayed in operation for over nine centuries without any measures being taken to protect it: still today, every morning, the monks begin their prayer with a plea for deliverance for Apasios and Gregory Pakourianos.

9 Conclusion

The very concept of retreating from the world, inherited from pagan Antiquity, which guided the early monks, seems the opposite of the institution. Yet, institutionalisation followed closely behind, with the exception of Pachomian (cenobite) monasticism, which was regulated from the start. Even the groupings of ascetics in their *kellia* quickly constituted embryonic institutions, if not in their eyes, at least in the eyes of the visitors who flocked to receive their teaching. Simeon the Stylite's attempt at radical self-denial did not survive after his death; indeed his first disciple known to the sources, Daniel, was

116 Today Asenovgrad, a town of several tens of thousands of inhabitants: the transformation initiated by Pakourianos succeeded perfectly!

117 Including that of Batzokoba (Bulgarian name), after which the current monastery is named, flanked by the ossuary where Apasios and Gregory rested: Bachkovo.

compelled to found a monastic institution. This situation was clearly the same in the West, the Western-Eastern distinction being, it would seem, an inoperative concept *a posteriori* until at least the sixth century, particularly with respect to monks. The use of the institution for political ends to mark territory would seem to have appeared earlier in the West, where the Merovingian aristocracy used monasteries as a tool for marking out territory. This same use of the monastic institution is visible later in the Byzantine world, although here a lack of early sources may mislead. In any event, setting aside the different shapes they took, monasteries supply us with a clear example of the process of institutionalisation and inscription in space.

CHAPTER 16

The Institutionalisation of ʿAbbāsid Ceremonial

Nadia Maria El Cheikh

In 1951, Marius Canard wrote an article in which he compared Fāṭimid and Byzantine ceremonials. He prefaced his article by explaining that we know almost nothing about the ceremonial of the court in Baghdad and that the lack of documents relating to the ʿAbbāsids does not allow one to make the same type of comparison. In 1960, Dominique Sourdel reiterated the remarks of Canard to the effect that we are badly informed with respect to ʿAbbāsid ceremonial. Nevertheless, Sourdel felt that brief references in the chronicles and *adab* works, in addition to the information present in the work of Hilāl al-Ṣābiʾ, allowed him to assess and update the then current knowledge concerning ʿAbbāsid ceremonial.[1] Since then no major work on the development of ʿAbbāsid ceremonial has appeared and it is time to revisit some of these questions with the specific intention of understanding its process of institutionalisation.

The first part of this paper discusses the antecedents to ʿAbbāsid ceremonial, including the initial tensions of the emerging Muslim community vis à vis ceremonials; the second part of the paper discusses the Palace as the exclusive stage for court ceremonial; the third part analyzes the gradual institutionalisation of ʿAbbāsid ceremonial, making frequent references to the Byzantine ceremonial for comparative purposes, bearing in mind that awareness of similarities and analogies between patterns of behavior can clarify not only what was shared by the two cultures and the ground that they had in common, but, conversely, illuminate what was peculiar to them as well as the respective processes of institutionalisation.[2]

1 Textual Antecedents and Hesitant Beginnings

ʿAbbāsid ceremonial falls back on Roman, Byzantine and Sassanian antecedents. According to Aziz al-Azmeh, "a repertoire of concepts and topoi was

1 Marius Canard, "Le cérémonial fatimide et le cérémonial byzantin: Essai de comparaison," *Byzantion* 21 (1951), 355–420; Dominique Sourdel, "Questions de cérémonial abbaside," *Revue des études islamiques* 28 (1960), 122–148.

2 See for instance Anthony Cutler, "The Parallel Universes of Arab and Byzantine Art (with Special Reference to the Fatimid Era)," in *Image Making in Byzantium, Sasanian Persia and the Early Muslim World: Images and Cultures* (Aldershot: Ashgate, 2008), x.

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contained within an ambient late antiquity."[3] That parts of ʿAbbāsid ceremonial come from the Sassanian model is clear from the *adāb al-ṣulṭāniyya* texts, treatises on monarchical government which form a distinctive genre of classical Arabic and Persian literature. There is scholarly consensus that this type of discourse belongs to a Persian tradition of writing which was consolidated during the Sassanian period where the "advice to ruler" writings (*naṣīḥat al-mulūk*) were part of the political culture of the state institution. The *adāb al-ṣulṭāniyya* discourse emerged in response to a historical need, namely, "theorising the state-empire" in the late Umayyad and early ʿAbbāsid period, given that Persian political culture and tradition were superior to the Arabic oral political inheritance.[4] A notable ʿAbbāsid example of such works is *Akhlāq al-mulūk* by Muḥammad b. al-Ḥārith al-Thaʿlabī (d. 250/864) (formerly attributed to al-Jāḥiẓ), a work of advice literature that entered Arabic literary culture through a translation from Pahlavi in the third/ninth century and enjoyed a long popularity. The Sassanian elements in this manual are so clear that some scholars have suggested that it is in essence a Persian text to which al-Thaʿlabī added examples, attestations and explanations. While the most recent editor of this text disagrees with this analysis and gives a larger role to al-Thaʿlabī in his use of Arabic-Islamic texts which are now lost, a quick look at *Akhlāq al-mulūk* leaves no doubt as to the Sasanian antecedents that inform it. In the chapter on boon-companionship, for instance, al-Thaʿlabī starts with examples from the Persian kings "for they were the first in that and we took from them the regulations on kingship (*mulk*) and kingdom as well as the positions (*tartīb*) of *al-khāṣṣa* (the elite) and *al-ʿāmma* (the public)…"[5]

The main text that deals extensively with ʿAbbāsid court ceremonials, *Rusūm dār al-khilāfa,* belongs to this genre of writings. This fifth/eleventh-century text relates the rules and regulations of the ʿAbbāsid court. Authored by Hilāl al-Ṣābiʾ (d. 498/1056), it includes a myriad of material ranging from how caliphs sit on the throne and what they wear to advice to viziers, secretaries, boon companions and others on how to dress, how to sit, and how to address the caliph, to descriptions of caliphal audiences. It is the unitary work of one

3 Aziz al-Azmeh, *Muslim Kingship: Power and the Sacred in Muslim, Christian, and Pagan Polities* (London and New York: I.B. Tauris, 1997), 85.

4 ʿIzz al-Dīn al-ʿAllām, *al-Ṣulṭa waʾl-siyāsa fiʾl-adab al-ṣulṭānī* (n.p., 1991), 57–59. Julia Bray states that most Islamic mirrors for princes draw upon a fund of wisdom attributed to ancient Greek and Persian as well as Muslim sages; "Al-Thaʿalibi's *Adab al-muluk*, a Local Mirror for Princes," in *Living Islamic History: Studies in Honour of Professor Carole Hillenbrand*, ed. Yasir Suleiman (Edinburgh: Edinburgh University Press, 2010), 32–46.

5 Muḥammad b. Ḥārith al-Thaʿlabī, *Akhlāq al-mulūk*, ed. Jalīl ʿAṭiyya (Beirut, 2003), 51 and 11.

author who decided to publish on this topic "lest this remaining knowledge falls into oblivion."[6] It is based on first-hand information from the author's grandfather, who had witnessed ceremonial in its full splendor. Like other such texts, *Rusūm dār al-khilāfa* is mostly normative and prescriptive, spelling out rules and offering guidelines as to the appropriate behavior in ceremonial contexts.

While, textually, the antecedents for the ʿAbbāsid ceremonial were Persian, in practice they were Byzantine. Byzantine influence on the developing Islamic civilisation was greatest during the early period, when Arabs borrowed institutions and Byzantine architectural techniques, notably ceremonial architecture which served as a vehicle for the glorification of the Umayyad dynasty, the Islamic empire and the new religion.[7] In the words of H.A.R. Gibb, "the most striking legacy of the imperial heritage … is furnished by the Umayyad policy of erecting imperial religious monuments."[8] Umayyad caliphs are said to have requested Byzantine help in the decoration of the mosque in Damascus in the early second/eighth century. The geographer al-Muqaddasī explained why the splendor of the mosque in Damascus was so important. He says that he asked his uncle why the Umayyad Caliph al-Walīd had been "so extravagant in spending the money of the Muslims on such buildings when it could have been better employed in rebuilding fortresses [and] repairing roads." His uncle replied:

> Do not think like that, my son. Al-Walīd was divinely-guided in a matter of great importance. He looked out over Syria, the land of the Christians, and saw there fine churches, such as the church of the Holy Sepulchre and those of Lydda and Edessa, enticing in their ornamentation and great fame. So he erected for the Muslims a mosque which would divert their attention from these churches and he made it one of the wonders of the earth.[9]

By patronising the construction of superb monuments, al-Walīd was taking yet another step to confirm that he, the Caliph of Islam, possessed all of the

6 Hilāl al-Ṣābiʾ, *Rusūm dār al-khilāfa,* ed. Mikhāʾil ʿAwwād (Baghdad: al-Majmaʿ al-ʿIlmī al-ʿIrāqī, 1964), 6; *Rusūm dār al-khilāfah*, trans. Elie Salem (Beirut: American University of Beirut, 1977), 12.

7 Oleg Grabar, *The Formation of Islamic Art* (New Haven: Yale University Press, 1987), 43–71.

8 H.A.R. Gibb, "Arab-Byzantine Relations under the Umayyad Caliphate," *Dumbarton Oaks Papers* 12 (1958), 219–233.

9 Al-Muqaddasī, *Aḥsan al-taqāsīm fi maʿrifat al-aqālīm* , ed. M.J. De Goeje (Leiden: Brill, 1906), 158.

characteristics of an exalted ruler. The importance of ceremonial architecture was becoming more apparent to Muslim rulers as they attempted to vie on all levels with Byzantium and its emperors.

Byzantine imperial dignity surrounded by rituals, processions, seclusion, rich court costumes, a highly developed court retinue, beautiful objects made of gold, silver and precious gems captured the Arabs' imagination, leaving manifold traces in our texts. Byzantine ceremonial was, however, a far cry from the relatively simple ambiance surrounding the leaders of the early Muslim community, which initially held its distance from elaborate ceremonial displays, seemingly adopting a totally opposite behavior. One depiction of Byzantine splendor describes the visit of the Muslim commander, Khālid b. al-Walīd (d. 21/642), to the Byzantine leader in Syria, Vahān. Vahān ordered that ten rows of Byzantine soldiers be marshaled to the left and right of Khālid. The soldiers' faces were masked with iron so that only their eyes could be seen. Vahān sat on a throne of gold; on his head was a golden crown ornate with precious stones, before him were spread carpets and *namāriq*[10] and next to him stood Byzantine pages carrying in their hands poles of gold and silver. However, the source states that Khālid remained unimpressed; in his eyes, the Byzantines (*Rūm*) were less than dogs.[11]

Kitāb futūḥ al-Shām relates an encounter between Muʿādh b. Jabal (d. 18/639), the messenger of the Muslim leader Abū ʿUbayda b. al-Jarrāḥ (d. 19/639), and the Byzantine patricians. Muʿādh found the latter lying on luxurious couches on which he refused to sit because he did not wish to walk on carpets and sit on *namāriq*, which "you have withheld from the weak Byzantines." He chose, instead, to sit on the floor, neglecting "these vanities and worldly possessions."[12] The Muslim emissary dismissed the importance of Byzantine wealth altogether, upholding the Muslim ideals of poverty, egalitarianism, and humility. Indeed, a Byzantine messenger who was sent to Abū ʿUbayda was unable to recognise the Muslim *amīr* in the Muslim camp. Abū ʿUbayda, sitting on the floor and not wearing the cloths of princes, was unidentifiable.[13] Reflecting the mores and ways of the early Arab-Muslim tribesmen, the texts depict the Muslims as rejecting the worldly luxurious ways of the

10 *Namraq* (singular) is a word derived from the Persian to signify soft and pliable; see Shaul Shaked, "From Iran to Islam: On Some Symbols of Royalty," *Jerusalem Studies in Arabic and Islam* 7 (1986), 75–91.

11 Ibn Aʿtham al-Kūfī, *Kitāb al-futūḥ* (Haydarabad: Dā'irat al-Maʿārif al-ʿUthmāniyya, 1968), I, 239–240 and 177.

12 Al-Azdī, *Kitāb futūḥ al-Shām*, ed. Ensign Lees (Calcutta, 1874), 101–102.

13 Al-Azdī, *Kitāb futūḥ al-Shām*, 107.

urban Byzantines. The new Arab elite that replaced the Byzantine leaders in Syria was thus distinguished by its humility and lack of ceremonial. Their egalitarian and religious scruples prevented them from formalising their elite status by means of wealth, clothing and ceremonial.

In spite of such comments, which reflect their initial ambivalence concerning Byzantine ceremonial, the Muslims soon enough understood its importance and as their Empire expanded they started imitating the splendor that they witnessed in Byzantine lands. Early Muslims had to adapt to the Near Eastern environment, which had a long tradition of governance. The governor of Syria, Muʿāwiya b. Abī Sufyān, told Caliph ʿUmar b. al-Khaṭṭāb (13–23/634–644), who had accused him of leading "a Chosroes-like way of life," that it was of great importance for the Arab ruler to appear as similar as possible to his Christian opponent.[14] But even under the Umayyads, courtly life had not crystallised into regular ceremonial procedures but was intermixed with aspects of informality.[15] Ibn Khaldūn (d. 784/1382), much later on, reminds his readers that:

> They [the Muslims] wanted to avoid the coarseness of royal authority and do without royal customs. They also despised pomp, which has nothing whatever to do with the truth. The caliphate then came to be royal authority and the Muslims learned to esteem the splendor and luxury of this world. Persian and Byzantine clients, subjects of the preceding dynasties, mixed with them and showed them their ways of ostentation and luxury.[16]

2 The Palace as a Theatre for Power

The establishment of ceremonial was gradual and was linked to architectural developments. While mosques were the first elements in a system of visual symbols representing Muslim imperial organisation, court ceremonial was connected to the foundation of Baghdad around the mid-second/eighth century as the capital of the ʿAbbāsids. This made it possible to plan architecture on a grand scale including two theatres of royal display, the palace complex and the adjacent mosque. The palace attained a symbolic importance as reflected in a later statement to the effect that "it was the crown of Baghdad…

14 Abū Jaʿfar al-Ṭabarī, *Taʾrīkh al-rusul waʾl-mulūk,* ed. S. Guyard and M.J. de Goeje (Leiden: Brill, 1879–1901), prima series, II, 207. These anecdotes are reproduced in my *Byzantium Viewed by the Arabs* (Cambridge, MA: Harvard University Press, 2004), 153–155.

15 Al-Azmeh, *Muslim Kingship*, 69.

16 Ibn Khaldūn, *Muqaddimah*, trans. Franz Rosenthal (New York: Pantheon, 1958), II, 50.

and one of the great achievements of the ʿAbbāsids" and that its fall presaged the collapse of the dynasty.[17] The fame of the ʿAbbāsid palace was such that the Byzantine emperor Theophilus (829–842) was persuaded to build the Byras palace in Constantinople in imitation of the ʿAbbāsid palace, thus marking an early instance of a shift in the direction of cultural influence between Constantinople and Baghdad.[18] Accounts talk of ceremonial audiences that were held in the ʿAbbāsid palace in Baghdad, with hundreds of courtiers attending it, proceeding in a strict order of rank and including ceremonial items such as curtains and court dress. However, the hesitant beginnings lingered, at least rhetorically, as we read that the founder of Baghdad, Caliph al-Manṣūr, slept on his quilt on the floor of a small bare room.[19]

A major turning point took place with the establishment of a new capital in the first part of the third/ninth century in Sāmarrāʾ, north of Baghdad. Serving the purpose of lodging the new Turkish army, it was meant also to enhance the prestige of the ʿAbbāsid dynasty. The successive caliphs competed in building palaces and their most striking feature was their size: all were huge-walled compounds with clusters of courts, halls, gardens, assembly rooms, and passageways. This new palatine paradigm was characterised by "sprawling extra urban palatine complexes no longer attached to the congregational mosques."[20] The significant importance of these structures lies in their conception of a royal palace, totally new in Islam: hidden, secluded and self-sufficient.[21] The caliphs were increasingly kept away from the public and their appearances became more theatrically staged events. The Sāmarrāʾ palaces functioned as institutional objects as they testified architecturally, in size and scale, to a spectacular concentration of resources and power. The palaces themselves became actors in the ceremonial performance. The sources list, for instance, the twenty-two palaces that Caliph al-Mutawakkil built as exemplifying caliphal grandeur and extravagance.[22]

17 Hugh Kennedy, *The Court of the Caliphs*: *The Rise and Fall of Islam's Greatest Dynasty* (London: Weindenfeld & Nicolson, 2004), 136.

18 Hussein Kashani, "The Abbasid Palace of Theophilus: Byzantine Taste for the Arts of Islam," *al-Masaq* 16 (2004), 75–91.

19 Kennedy, *The Court of the Caliphs*, 143.

20 Gulru Necipoglu, "An Outline of Shifting Paradigms in the Palatial Architecture of the pre-Modern Islamic World," *Ars Orientalis* 23 (1993), 3–24.

21 Richard Ettinghausen and Oleg Grabar, *The Art and Architecture of Islam: 650–1250* (Harmondsworth: Penguin, 1987), 86.

22 Tayeb El Hibri, "The Empire of Iraq, 763–861," in *The New Cambridge History of Islam* (Cambridge: Cambridge University Press, 2010), 269–304. See Stuart Airlie's paper in this volume, above.

With the move back to Baghdad in the late third/ninth century, a new palatial city was gradually constructed. Starting with the reign of al-Muʿtamid (256–279/870–892), the Ḥasanī palace, built during the reign of Hārūn al-Rashīd (170–193/786–809), came to form the core of Dār al-Khilāfa. Al-Muʿtaḍid (279–289/892–902) built two palaces called al-Thurayyā and al-Firdaws and laid foundations of a third, Qaṣr al-Tāj. All three buildings stood on the Tigris bank, with great gardens stretching to the back, enclosing many minor palaces within their precincts. Al-Muqtadir enlarged al-Tāj which became the principal caliphal residence and which was linked by a subterranean passage to the palace of al-Thurayyā for the benefit of the harem women.[23] By the time of al-Muqtadir, the caliphal residence, Dār al-Khilāfa, had expanded into a vast complex of palaces, public reception and banqueting halls, residential quarters, mosques, baths, pavilions, sports grounds, pleasure and vegetable gardens, orchards and the like. It occupied an area nearly a square mile in extent, surrounded by a wall with many gates.[24] The caliphal residence came to resemble a small city, deep within which the caliph and his throne room were located, reached by a long route via gates, courtyards, gardens, antechambers and reception halls.[25] What is most distinctive about this phase is the growing separation of the rulers and their subjects, since the administrative and political centers were physically separated from the Muslim urban centers.[26] Moreover, the Dār al-Khilāfa projected, architecturally and ceremonially, the new caliphal image, which was subsequently adopted by the Fāṭimids and the Umayyads in Spain. Concerning the latter, D. Fairchild Ruggles has pointed out that ideas about architecture and palace ceremonial were borrowed from Baghdad and Constantinople starting in the third/ninth century and that the fruit of that union was Madīnat al-Zahrāʾ outside Cordoba. In general, however, ʿAbbāsid architectural innovations were felt all across the Islamic world and the gigantic palaces, in particular, "belonged to a new paradigm of exorbitant consumption and opulence."[27]

23 Guy Le Strange, *Baghdad during the Abbasid Caliphate* (Oxford: Clarendon Press, 1900), 252–255; Yāqūt, *Muʿjam al-buldān* (Beirut, 1956), II, 4.

24 Le Strange, *Baghdad*, 263.

25 D. Fairchild Ruggles, *Gardens, Landscape, and Vision in the Palaces of Islamic Spain* (University Park, PA: Pennsylvania State University Press, 2000), 87; and Francoise Micheau, "Bagdad," in *Grandes villes mediterranéennes du monde musulman medieval* (Rome: École française de Rome, 2000), 87–112.

26 Jere L. Bacharach, "Administrative Complexes, Palaces and Citadels," in *The Ottoman City and its Parts: Urban Structure and Social Order*, ed. Irene A. Bierman et al. (New Rochelle, NY: A.D. Caratzas, 1991), 111–128.

27 Fairchild Ruggles, *Gardens, Landscape, and Vision*, 87.

The configuration of these palaces, their internal organisation, and their ornamentation remains unknown. While archeological information is insufficient, textual information too is, according to Grabar, inadequate, for "nowhere do we read a description that can be translated into architectural forms."[28] The literary sources are not informative about the interior disposition of the ʿAbbāsid palaces. They supply us with the terminology used for parts of the palaces but it is almost impossible to imagine these elements as actual physical buildings.[29] The palaces of the ʿAbbāsid caliphs had clearly "evolved out of all recognition" so that by the early fourth/tenth century the caliph's palace "had become his kingdom, at once a fortress, a scene for the public performance of monarchy, a luxurious dwelling and a death trap."[30] These palaces, which resembled cities with respect to their size and complexity, provided the caliph with a frame that separated him from the people, as well as with a throne room from which to dominate the rest of the palace.[31] Dār al-Khilāfa was meant to epitomise the entire universe, standing for the caliph, the capital, and by extension, for the Islamic empire.

The palaces, especially starting with those in Sāmarrā', were a necessary step in the institutionalisation of court ceremonial. The complex of palaces provided the setting for court rituals and ceremonies, becoming part of a symbolic system, which "represented the relations of power and rule in a stable material way beyond the momentary social contact."[32] Ceremonies in the ʿAbbāsid context became increasingly restricted to the Palace, which both enclosed the court and reminded outsiders that they were excluded. Ceremonial was institutionalised, and in turn, it functioned in a way to institutionalise the court by producing difference, creating stable boundaries between social groups and individuals.

3 The Institutionalisation of ʿAbbāsid Ceremonial: Comparison with the Byzantine Model

By the fourth/tenth century, caliphs had almost completed the process of distancing themselves from the general populace, removing themselves

28 Grabar, *Formation*, 158.

29 Oleg Grabar, "Palaces, Citadels and Fortifications," in *Architecture of the Islamic World: Its History and Social Meaning*, ed. George Michell (London: Thames and Hudson, 1984), 65–79.

30 Kennedy, *Court of the Caliphs*, 159.

31 Fairchild Ruggles, *Gardens, Landscape, and Vision*, 92.

32 Olaf Morke, "The Symbolism of Rulership," in *Princes and Princely Culture 1450–1650*, ed. Martin Gosman et al. (Leiden: Brill, 2003), I, 31–49.

architecturally and ceremonially. Obedience and veneration were premised on royal distance, which had become an accepted feature of Islamic monarchical tradition. As Paula Sanders described it, "the protocols of the court and the symbols of authority placed the caliph at the top of a hierarchy…"[33] Ceremonials became more sumptuous, the ʿAbbāsid caliphs seeking to compensate for the loss of their powers by a greater magnificence.[34] Indeed, Cynthia Robinson has argued that the ceremonial space served as a place "where dynastic solvency, legitimacy and power may be physically demonstrated,"[35] and Malcom Vale has indicated that the semblance of power "could be just as potent a force in the creation and sustenance of princely ideology."[36]

That by the fourth/tenth century a developed and regulated court ritual was institutionalised is reflected in the famous description of the reception granted to the Byzantine ambassadors in Baghdad in 305/917. The envoys were kept waiting for two months so that the palaces and the display could be prepared. Before being introduced to the presence of the caliph, the envoys were shown over the twenty-three separate palaces. They visited the residence of the chamberlain Naṣr, which was located inside Dār al-Khilāfa, and "observing so large a party and so marvelous a sight," they thought Naṣr to be the Caliph.[37] The Byzantine envoys were finally brought before al-Muqtadir in the palace of al-Tāj. Ibn Miskawayh states:

> When they reached the Palace [al-Tāj], they were taken into a corridor, which led into one of the quadrangles, then they turned into another corridor which led to a quadrangle wider than the first, and the chamberlains kept conducting them through corridors and quadrangles until they

33 Paula Sanders, *Ritual, Politics, and the City in Fatimid Cairo* (Albany: SUNY Press, 1994), 32.

34 Dominique Sourdel, "Robes of Honor in Abbasid Baghdad during the Eighth to the Eleventh Century," in *The Medieval World of Investiture*, ed. Stewart Gordon (New York: Palgrave, 2001), 137–145.

35 Cynthia Robinson, *In Praise of Song: The Making of Courtly Culture in al-Andalus and Provence, 1005–1134 A.D.* (Leiden: Brill, 2002), 49.

36 Malcom Vale, *The Princely Court: Medieval Courts and Culture in North-West Europe, 1270–1380* (Oxford: Oxford University Press, 2001), 200–207.

37 Al-Khaṭīb al-Baghdādī, *Taʾrīkh Baghdād* (Beirut, n.d.), I, 100–101; *The Topography of Baghdad in the Early Middle Ages,* trans. Jacob Lassner (Detroit: Wayne State University Press, 1970), 87. See also *Rusūm*, 17. This is reminiscent of the anecdote to which Simon MacLean refers in this volume, above, where Byzantine envoys on a visit to Charlemagne were led through number of rooms in which they repeatedly mistook palace officials for the emperor.

> were weary with tramping and bewildered … Finally they approached the *majlis* in which al-Muqtadir was to be found.[38]

This highly official ceremony underscores the notion of princely isolation and separateness, a notion connected with the theme of the forbidding and forbidden palace consisting of a labyrinth of separate elements secretly and mysteriously connected to each other.[39] The passage from one court to another served to establish a narrative culminating in the audience with the caliph himself.[40] The palace was an active player in the narrative and the concentration of power in this one site gave messages of meticulous control over this particular space, and, by extension, over the territory of the whole empire.

The architects, artists and artisans deployed, moreover, all their talent to give to Muslim and foreign visitors the impression of an extraordinary wealth and luxury. Al-Khaṭīb al-Baghdādī provides details of this sensational interior decoration, stating:

> The number of gold curtains of brocade with magnificent gold embroideries … consisted of 38,000 curtains … The number of carpets and strips … in the passages and in the courts, on which the generals and envoys of the emperor of *Rūm* trod, from the New Public gate to the presence of al-Muqtadir Bi'llāh … came to 22,000 pieces.[41]

In his commentary on the description of the Byzantine embassy, Grabar points out that with the exception of only one hall, Bāb al-ʿĀmma, all other units were prepared for the occasion. In other words, al-Muqtadir's palace complex did not have functionally defined forms. Rather, it was the human activity which determined the function of a given space: "The building was not a formal end in itself but a flexible support, a frame … whose visible aspect could be modified to suit the need of the moment."[42] Thus, the particular audience defined

38 Aḥmad b. Muḥammad b. Miskawayh, *Tajārib al-umam*, ed. H.F. Amedroz (Oxford: Blackwell, 1920), I, 55; *The Eclipse of the Abbasid Caliphate*, ed. and trans. H.F. Amedroz and D.S. Margoliouth (Oxford: Blackwell, 1921), I, 59.

39 Grabar, *Formation* 164.

40 Marcus Milwright, "Fixtures and Fittings. The Role of Decoration in Abbasid Palace Design," in *A Medieval Islamic City Reconsidered*: *An Interdisciplinary Approach to Sammara'*, ed. Chase Robinson (Oxford: Oxford University Press, 2001), 79–109.

41 Al-Khaṭīb al-Baghdādī, *Ta'rīkh Baghdād*, I, 101, in *Islamic Textiles*, trans. R.B. Serjeant (Beirut: Librairie du Liban, 1972), 22.

42 Grabar, *Formation*, 162–163.

the space. In this case the creation of such an "elaborate fantasy world" would take weeks of preparation and would have involved the transport of tapestries, carpets, curtains, clothing, and gold and silver work from the treasury and other palaces. Other elements of the experience included displays of mechanical devices and exotic animals, the deployment of massed ranks of soldiers and court officials, the use of perfumes and the careful orchestration of both sound and silence.[43]

Similarly, most of the Byzantine imperial ceremonies described in Constantine Porphyrogenitus's fourth/tenth century *Book of Ceremonies* took place in the Great Palace. In the preface it states that his collected descriptions of imperial ceremonies "will shine to the splendor of the imperial office like a bright mirror set forth in the midst of the palace."[44] *The Book of Ceremonies* includes a description of the reception of Muslim envoys:

> The Saracens were summoned to come and see the emperor. And the Saracen legates … went in through the Brazen Gate and the Triclinium of the Scholae and the Tribounalion, and turning off to the right … they sat there until the emperor arrived and all was ready for the reception …[45]

The text has long passages describing the decorations in all the buildings where the visitors were received, including the positioning and dress code of the imperial officials and soldiers in attendance. As revealed in the description of the audience of the western envoy Liutprand of Cremona in 949 A.D., receptions at the Byzantine palace were organised to appeal to all sensory organs of the guests including sweet-smelling scents, chanting of acclamations and

43 Milwright, "Fixtures and Fittings." Different ceremonial spaces and occasions had different types of audiences. A different kind of reception, marked by informality, for instance, was that given to the caliph's boon companions; see Nizam al-Mulk, *Book of Government or Rules for Kings: The Siyasatnama or Siyar al-Muluk*, trans. from the Persian by H. Darke (London: Routledge and Kegan Paul, 1960), 92–93.

44 J.M. Featherstone, "De Ceremoniis and the Great Palace," in *The Byzantine World*, ed. Paul Stephenson (London and New York: Routledge, 2010), 162–174. As is the case with the fourth/tenth century ʿAbbāsid caliphal grounds, the structures and spatial elements of the Byzantine palace are non-existent and can be only partially reconstructed on the basis of written sources, notably the *Book of Ceremonies*, which lacks crucial information because it was written for those familiar with the palace. Thus it does not tell us of the sizes of the rooms and courtyards, or of the lengths of the corridors, so distances are difficult to establish.

45 Jeffrey Featherstone, "Olga's Visit to Constantinople," *Harvard Ukrainian Studies* 14 (1990), 293–312.

music, mechanical devices, fountains which flowed with scented wine, and food served in the banqueting halls.[46]

The demeanor of emperor and caliph were carefully orchestrated. According to Leslie Brubaker, in Byzantium the artificial impassivity and the absence of gesture and reaction were signs of imperial majesty and dignity.[47] The eleventh-century A.D. Byzantine courtier Michael Psellos said of Emperor Isaac I Komnenos: "You are straight, stiff … steadfast, firmly fixed, lofty …" Psellos stressed the ruler's lack of emotions: "… for there are no unseemly qualities in you, neither easily excited emotion … nor delight, nor any graces, nor much laughter."[48] Such decorum was also expected of ʿAbbāsid caliphs. People would speak only after having been given permission by the caliph who relayed his orders through his pages or chamberlains.[49] In his reception of the Byzantine ambassadors, al-Muqtadir seems to have been spoken for by court officials. Not only that, but during audiences, the caliph was concealed behind a curtain, *sitr*. It is only once those in attendance were in their assigned places that the *sitr* was raised. It is significant to note that al-Thaʿlabī's *Akhlāq al-mulūk* includes a section on the use of the curtain and traces its history all the way back to the founder of the ʿAbbāsid dynasty, Abū al-ʿAbbās in the mid second/eighth century.[50]

The Byzantine imperial insignia in the ceremonies were primarily items of clothing: the red shoes, golden scarf adorned with precious stones, crown, and golden cross. In addition, there were objects that preceded and followed the emperor, such as banners, lances and shields. The insignia of sovereignty for the ʿAbbāsid caliphs were mainly the staff, the seal, and the cloak of the Prophet. ʿAbbāsid caliphs also came to wear red shoes, a caliphal privilege, and according to Sourdel, perhaps reflecting a desire to imitate the Byzantine emperors.[51] Hilāl al-Ṣābiʾ provides the following description:

46 Jonathan Shepard, "Byzantine Diplomacy, A.D. 800–1204: Means and Ends," in *Byzantine Diplomacy, Paper from the Twenty-Fourth Spring Symposium of Byzantine Studies, Cambridge, March 1990,* ed. Jonathan Shepard and Simon Franklin (Aldershot: Variorium, 1992), 41–71.

47 Leslie Brubaker, "Gesture in Byzantium," *Past and Present* (2009), supplement 4, 36–56.

48 Henry Maguire, "Images of the Court," in *The Glory of Byzantium: Art and Culture of the Middle Byzantine Era, A.D. 843–1261* (New York: Metropolitan Museum of Art, 1997), 183–191.

49 Rules of conversation in the presence of caliphs are spelled out in al-Thaʿlabī's *Akhlāq al-mulūk*, 73–79; see also al-Azmeh, *Muslim Kingship,* 139.

50 Al-Thaʿlabī, *Akhlāq al-mulūk*, 57–68.

51 Sourdel, "Questions de cérémonial abbaside."

> It has been the tradition for the caliph to sit on an elevated seat on a throne … The caliph wears a long-sleeved garment, dyed black … On his feet he wears red boots; and in front of him he has the Qurʾān of ʿUthmān … On his shoulders he wears the garment of the Prophet … and in his hand he holds his staff …[52]

According to Gulru Necipoglu, this public image of the ʿAbbāsid caliph was not so different from that of the Byzantine emperor, who acted as God's vice-regent on earth: "Both the Abbasid and Byzantine palaces were sacred realms with heavenly associations whose ceremonial had a distinctively religious coloring."[53]

The garb of the Byzantine emperor was similarly strictly regulated, as the *Book of Ceremonies* gives precise descriptions of the costumes to be worn at various events, thus adding to the sense of order. The Arabic *Kitāb al-dhakhāʾir waʾl-tuḥaf* lists the different robes and crowns that the Byzantine emperors displayed during the various ceremonials, notably the "Largest Crown," which was suspended over the emperor's head when he sat in his audience hall to receive his own subjects and foreign envoys.[54] The ʿAbbāsid caliphs, by contrast, did not wear a crown, a *tāj*, but rather a *qalansuwwa ṭawīla,* a high canonical cap, usually made of silk.[55] Generally, there is very little mention in the Islamic sources of crowns and no mention of coronation (*tatwīj*), a reflection of the early nomad and pious Arab hostility, as already mentioned, towards Byzantine and Persian kingship.[56]

Indeed, the institutionalisation of ʿAbbāsid court ceremonial did not imply direct and complete duplication of the Byzantine model, and similarities in court ceremonial did not preclude differences in certain important aspects such as the distinction between crown and *qalansuwwa*. Another difference concerns the contentious issue of the ceremonial of prostration, the most important gesture of subservience and respect. The *Book of Ceremonies* unequivocally states that each person has to prostrate himself before the emperor, the only exception being the patriarch: "When the foreigner enters, he falls to the floor in reverence to the Emperors …"[57] Initially, the Muslims

52 Al-Ṣābiʾ, *Rusūm*, trans. Salem, 73.

53 Necipoglu, "An Outline of Shifting Paradigms."

54 Al-Rashīd b. al-Zubayr, *Kitāb al-dhakhāʾir waʾl-tuḥaf*, ed. Muhammad Hamidullah (Kuwayt: Dāʾirat al-Maṭbūʿāt waʾl-Nashr, 1959), 197.

55 For further descriptions see Y.K. Stillman, "Libās," *Encyclopedia of Islam*.

56 Andrew Marsham, *Rituals of Islamic Monarchy* (Edinburgh: Edinburgh University Press, 2009), 140.

57 Featherstone, "Olga's Visit to Constantinople."

regarded kissing the ground in front of a human being as blasphemy. According to Hilāl al-Ṣābiʾ "it was not the practice of old for an *amīr*, a *wazīr,* or a high dignitary to kiss the ground when he entered the presence of the caliph,"[58] but later this practice was introduced "and to this rule all people comply."

> In the past, the crown princes, judges, jurists, ascetics and readers of the *Qurʾan* kissed neither the hand nor the ground. They merely saluted … Now, however, they have joined the others in kissing the ground, except for a few who avoid this practice. Those of middle and low ranks, those below — the general public, and people without social status — are considered too low to partake in the honor of kissing the ground.[59]

The religious establishment seems to have been especially opposed to this particular ceremonial as they were the last to go along with it. The remarks of al-Ṣābiʾ prove the existence of different policies of comportment at court depending on the particular audience. Moreover, it reflects the gradual and rather resistant institutionalisation of an important ceremonial at the ʿAbbāsid court. Al-Ṣābiʾ describes the Byzantine ambassador standing before Caliph al-Muqtadir and not kissing the ground, explaining that the Muslims were excused from this practice in Byzantium. Al-Baghdādī quotes the Byzantine ambassador as telling al-Muqtadir: "Had I known that the caliph would ask me to kiss the carpet, I would have done it, for it is in conformity to our protocol – although it is never asked of your ambassador."[60] Ibn Miskawayh, however, in relating this visit, states that when the envoys entered the presence of the Caliph, "they kissed the ground and stationed themselves where they were told by the chamberlain Naṣr to stand."[61] Prostration was clearly a muddled issue within the ʿAbbāsid court and between the ʿAbbāsid and Byzantine courts. Had the practice evolved at the ʿAbbāsid court without the Byzantines having been made aware of it? Is it perhaps that the muddling is one provoked by the Islamic sources which were not quite sure where the practice was at? Or is it that the authors were not comfortable with the practice to begin with? The tension between the sources and the practice is visible in this particular case. Moreover, the main rivals of the ʿAbbāsids, the Fāṭimids, who in the late fourth/tenth century were openly practicing the ceremonial of prostration in Cairo, might have propelled some of the sources to mark boundaries

58 Al-Ṣābiʾ, *Rusūm*, 29.

59 Al-Ṣābiʾ, *Rusūm*, 29–30.

60 Al-Ṣābiʾ, *Rusūm*, 20.

61 Ibn Miskawayh, *Tajārib*, I, 55.

and highlight an ethical superiority by reiterating its non-existence on the ʿAbbāsid turf.

Another difference between the ceremonials of the two courts is that while the ceremonial space in Baghdad was limited to the caliphal palace, in Constantinople the church of Hagia Sophia and the hippodrome, in addition to the imperial palace, were main ceremonial spaces representing the three great institutions at Constantinople, namely, the imperial power, the Church, and the people.[62] For instance, we know that on the occasion of the reception of the Muslim emissaries from Tarsus in 946 A.D., they were taken to the hippodrome to watch the chariot races, at the end of which they witnessed a ceremonial procession in which the factions of the Blues and the Greens both participated. Thus, the hippodrome functioned, in parallel to the great palace, in the "mise en scène" of imperial power.[63]

Another ceremonial that had no parallel in static ʿAbbāsid caliphal ceremonials, which took place almost entirely in the palace,[64] was the religious procession of the Byzantine emperor from the palace to the Great church. Analyzing the ceremony which solemnly conducted the emperor to St Sophia, Dagron has suggested that the ceremonial was intended to test "the nature, limits and contradictions" of the emperor's power, and to confirm his suitability to preserve it. The church was a place charged with memories, with stories of emperors who were refused entry before asking pardon for their sins from the priests. While the power of the emperor was absolute, he might, at any moment, be considered illegitimate by the Church. This is, according to Dagron, what this ceremonial and the *exempla* associated with it recalled.[65] In this connection, it is significant to point out that the ʿAbbāsid sources have left us a unique description of the procession of the Byzantine emperor to Hagia Sophia, which the Arab prisoner Hārūn b. Yaḥyā witnessed during his captivity in Constantinople.[66] Perhaps the novelty of what Hārūn saw in the Byzantine

62 Gilbert Dagron, *Emperor and Priest: The Imperial Office in Byzantium* (Cambridge: Cambridge University Press, 2003), 95.

63 Nicolas Dracourt, "Amabassadeurs étrangers à Constantinople: Moyens de contacts, d'échanges et de connaissances partielles du monde byzantin (VIII^e–XII^e siècles)," in *Espaces d'échanges en Mediterranée: Antiquité et Moyen ages* (Rennes: Presses Universitaires, 2006), 107–134.

64 The only two existing accounts of urban processions in Baghdad describe processions of viziers; Fāṭimid Cairo, by contrast, saw many such processions; see Sanders, *Ritual, Politics and the City in Fatimid Cairo*, 8.

65 Dagron, *Emperor and Priest,* 103, 113–114 and 124.

66 Hārūn is believed to have been in Constantinople during the late third/ninth and early fourth/tenth century. See Liliana Simeonova, "In the Depths of Tenth-Century Byzantine

capital explains the great interest and attention to detail that characterises his description. Hārūn lays down the manner in which the procession advanced, on foot, and identifies participants according to rank, age, ethnic origin and the like, describing their clearly regulated costumes.[67] The theatricality of this public ritual ceremony with its costumes, staging, stylisation of action and sequential processional organisation was all the more impressive, in Hārūn's eyes, given the absence of such public processions in the ʿAbbāsid context. Indeed, as already stated, ʿAbbāsid ceremonies were palatine, not public. Moreover, from around the mid-third/ninth century on, ʿAbbāsid caliphs almost never appeared in public and it took al-Muqtadir seven years first to appear before his subjects.[68]

Another major difference between the courts of Baghdad and Constantinople was in the important role allotted to Byzantine empresses in ceremonials, in contrast to the complete absence of such a role in the ʿAbbāsid context, thus underlying the public vs. private dimension of the respective courts. The prominence of the Byzantine empress at court ceremonies meant that an incoming princess had to be instructed into a whole cycle of traditions and court ceremonials in order to participate correctly.[69] She underwent intensive training in preparation for her coronation and marriage, at the end of which a reception was held during which she was presented to the court and all the officials and their wives.[70]

The empress' ceremonials were, moreover, not confined to the palace but, on special occasions, took place in the public arena: The *Book of Ceremonies* records that during the Pentecostal liturgy the empress sat in the gallery of Hagia Sophia and granted audience to the wives of imperial dignitaries. On Palm Sunday the empress received church officials.[71] Byzantine empresses,

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Ceremonials: The Treatment of Arab Prisoners of War at Imperial Banquets," *Byzantine and Modern Greek Studies* 22 (1998), 74–103.

67 Hārūn's description is inserted in Ibn Rustih, *Kitāb al-aʿlāq al-nafīsa,* ed. J.M. de Goeje (Leiden: Brill, 1892), 123–125.

68 Al-Azmeh, *Muslim Kingship*, 138.

69 Judith Herrin, "Theophano: Considerations on the Education of a Byzantine Princess," in *The Empress Theophano: Byzantium and the West at the Turn of the First Millenium*, ed. Adelbert Davis (Cambridge: Cambridge University Press, 1995), 64–85.

70 Judith Herrin, *Women in Purple: Rulers of Medieval Byzantium* (London: Weidenfeld & Nicolson, 2001), 58–63; and Jean Ebersolt, "Etudes sur la vie publique et privée de la cour byzantine," in *Constantinople: Receuil d'études, d'archéologie et d'histoire* (Paris: Adrien-Maisonnneuve, 1951), 27–33.

71 *Le livre des cérémonies*, ed. A. Vogt (Paris: Belles Lettres, 1935–1940), I, 61–64. See Liz James, *Empresses and Power in Early Byzantium* (Leicester: Leicester University Press, 2001), 52–58.

thus, presided over their own court and ceremonial spheres and were involved in a calendar of rites and in particular ceremonies.[72] Indeed, while Byzantine court women lived in settings segregated from men, they did not live in enclosed communities of wives and concubines available for the emperor's pleasure, as was the case in the ʿAbbāsid caliphal context.[73] The empress and her entourage were required to balance the male hierarchy attending on the emperor, as well as to receive the wives of dignitaries, and to provide a female counterpart to the ceremonies described in the *Book of Ceremonies*. This is confirmed in an anecdote about the long-term widower, Emperor Michael II (820–829), whereby the men of his court complained because there was no empress to lead their wives in the court of women. This is attested even more on the occasion of the visit of princess Olga of Kiev in 957 A.D. to Constantinople, when Empress Helen and her attendants prepared an elaborate series of receptions and banquets, together with introduction, obeisances and exchange of gifts.[74]

None of this is found in ʿAbbāsid sources. At no time are the women of the ʿAbbāsid caliphal harem introduced formally to officials or courtiers and at no time do they play a role in court ceremonial. Even the most important feminine presence at the ʿAbbāsid court, namely, the mother of the caliph, was not connected to any ceremonial.[75] Women of the ʿAbbāsid court did not partake in court ceremonial which included men, they were not part of any public ceremonial outside the palace, and we do not read details of any private ceremonial that involved exclusive family events, although they must have existed. Their very absence was significant, however, as it served to demarcate the public realm and royal power, since the very notion of palace women implies their remaining mostly hidden from view.[76]

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72 Lynda Garland, "Imperial Women and Entertainment at the Middle Byzantine Court," in *Byzantine Women: Varieties of Experience, 800–1200*, ed. Lynda Garland (Aldershot: Ashgate, 2006), 177–191. *Le livre des ceremonies*, I, 61.

73 Kathryn Ringrose, "Women and Power at the Byzantine Court," in *Servants of the Dynasty: Palace Women in World History,* ed. Anne Walthall (Berkeley, Los Angeles, London: University of California Press, 2008), 65–80.

74 Carolyn L. Connor, *Women of Byzantium* (New Haven: Yale University Press, 2004), 214; and Featherstone, "Olga's Visit to Constantinople"; Ringrose, "Women and Power at the Byzantine Court"; Constantin Zuckerman, "Le voyage d'Olga et la première ambassade espagnole à Constantinople en 946," *Travaux et Mémoires* 13 (2000), 647–672.

75 See my "Gender and Politics: The Harem of al-Muqtadir," in *Gender in the Early Medieval World: East and West, 300–900*, ed. Lesley Brubaker and Julia Smith (Cambridge: Cambridge University Press, 2004), 147–161.

76 Anne Walthall, "Introducing Palace Women," *Servants of the Dynasty*, 1–21.

4 Conclusion

Irvin Schick has pointed out that knowledge of place largely derives from texts, and that one should not lose sight of this circularity when assessing the relationship between spatiality and literature, especially since the invention of location is based upon a combination of personal experience and ambient knowledge.[77] Texts create political cultures, palaces and ceremonial practices, and fashion images of order and disorder. The texts that this paper has relied upon are "insider" texts,[78] in the sense that they were authored by individuals associated with the court. Hilāl al-Ṣābi', for instance, was a member of a secretarial family that was affiliated to the court over several generations. But other texts, notably historical ones, were also authored by individuals related to the court. Indeed, networks of learning "overlapped with the administrative and military grids that powered medieval Islamic states" and well-placed historians relied on accounts that were produced in court circles to which they themselves belonged.[79] The philosopher historian Ibn Miskawayh (d. 421/1030) worked for many years at the court of the Buyid rulers recording events that he experienced or that he heard from the actors themselves; it is hence not a coincidence that in attempting to understand the gradual institutionalisation of ceremonial at the ʿAbbāsid court we should fall back on their works. Not only did their position give them access to information about the court, both orally and in terms of official documents; these authors were personally interested in including information about the internal organisation of the court, including ceremonial.

These texts divulge that the institutionalisation of ʿAbbāsid ceremonial was gradual, becoming, by the fourth/tenth century, one of the insignia of dynastic rule in the Islamic world. The ʿAbbāsids went on accumulating and systematising royal prerogatives and ceremonial, even if tensions persisted. All the ceremonies and rituals came to be condensed in court ceremonial, in the restrained space of the palace. Like the *Palatium*, which was a metaphor for the Carolingian order as a whole, and like the cathedrals in the Iberian world, the caliphal palaces came to embody much more than themselves.[80] In the words of Jere Bacharach, "political power, religious values and ideologies are often

77 Irvin Cemil Schick, *The Erotic Margin: Sexuality and Spatiality in Alteritist Discourse* (London: Verso, 1999), 32.

78 For this term, see Stuart Airlie in this volume, above.

79 Chase Robinson, *Islamic Historiography* (Cambridge: Cambridge University Press, 2003), 120, 124.

80 See Simon MacLean's paper in this volume, above.

expressed through architecture,"[81] and in this case, palace architecture. The structural and architectural developments of the ʿAbbāsid palaces reflected the evolution of the state and the evolution of certain connected institutions, notably court ceremonial.

The grand ceremonial receptions in Baghdad were magnificent pieces of theatre, which involved a wide network of trained people required to produce "the magic."[82] The attributes of such ceremonials contributed to glorify the caliph who was the star of the show. First there was a huge palace complex, which provided the stage and the décor. Then, there was a large number of "courtiers" and servants who were simultaneously performers, extras and the first row of audience. In such ceremonials, caliphs showed mastery of their environment down to the finest detail.

The ʿAbbāsid caliphs used ceremonial to enhance their power, prestige and legitimacy. Indeed, political power needs not only an executive apparatus to endure; it also needs to be conveyed through visual symbolic representations and ceremonial arrangements.[83] Court ceremonies were, according to Janette Dillon, "the micro-language in which politics was played out."[84] As Simon MacLean demonstrates in this volume, the comments of the historian al-Ṭabarī on the Umayyad caliph al-Walīd II were meant to contrast the rusticity and mobility of the Umayyad dynasty with the civility and stability of the ʿAbbāsids. More particularly, the ceremonial display manifested during the visit of the Byzantine ambassadors to the caliphal palace in Baghdad was perhaps a response to the political environment of the time, a reflection of the caliphate's anxiety to affirm its legitimacy in the wake of defeat and reassert its physical presence in the capital city. But this in itself reflects the importance of ceremonial display and its use for political ends. Indeed, "spectacle was an intrinsic part of power politics … establishing the monarchy's public image and political reality in the public consciousness."[85]

81 Bacharach, "Administrative Complexes, Palaces and Citadels."

82 Dimitri Gutas, *Greek Thought, Arabic Culture: The Graeco-Arabic Translation Movement in Baghdad and Early Abbasid Society* (*2nd–4th/8th–10th Centuries*) (London and New York: Routledge, 1998), 124.

83 Stefan Leder, "Royal Dishes: On the Historical and Literary Anthropology of the Near and Middle East," in *Court Cultures in the Muslim World: Seventh to Nineteenth Centuries,* ed. Albrecht Fuess and Jan-Peter Hartung (London and New York: Routledge, 2011), 359–369.

84 Janette Dillon, *The Language of Space in Court Performance, 1400–1625* (Cambridge: Cambridge University Press, 2010), 16.

85 Liz James, *Empresses and Power in Early Byzantium*, 50. According to Cameron, the *Book of Ceremonies* emphasised the importance of order and harmony in the imperial court

The evidence alluded to confirms Byzantine influence on ʿAbbāsid ceremonials. However, impulses did not flow in one direction. Anthony Cutler has emphasised that, irrespective of who the originator of a particular procedure is, "no less important than the originary impulse was the reinforcement that came from repeated experience of the other's performance."[86] Nicholas Drocourt agrees that while aspects of the ambassadorial ceremonial had ancient and Persian origins that were common to the Byzantine and ʿAbbāsid courts, exchanges of embassies made them emulate each other.[87] Indeed, while the ʿAbbāsids relied strongly on the Byzantine and Sassanian heritage for their courtly practices and rituals, they reformulated some of its aspects in Islamic terms.[88] Tension between the early Muslim ideal of piety and the ostentation and prestige of ceremonial persisted most clearly in the ceremonial of prostration which reflects a conflict but also efforts at adjustment, adaptation, and accommodation. Moreover, ʿAbbāsid ceremonial, in its spatial and ritualistic qualities, seems to have been reproduced by others, notably, the Umayyads of Spain at Madīnat al-Zahrāʾ. In any event, rather than speaking about diverging paths one is confronted with parallel and even at times converging paths. A comparative exercise, thus, helps define specificities as well as the points of convergence and lingering tensions, allowing for a better understanding of the development of certain institutions and practices in the ʿAbbāsid context.

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and state. The reality was different and this is exactly what Constantine wanted most to conceal. Averil Cameron, "Texts as Weapons: Polemic in the Byzantine Dark Ages," in *Literacy and Power in the Ancient World,* ed. Alan K. Bowman and Greg Woolf (Cambridge: Cambridge University Press, 1994), 198–215.

86 Cutler, "The Parallel Universes of Arab and Byzantine Art."

87 Drocourt, "Christian-Muslim Diplomatic Relations."

88 Fuess and Hartung, "Introduction," *Court Cultures in the Muslim World*, 1–17.

CHAPTER 17

Palaces and Places

Conclusion

Ana Rodríguez

A Carolingian palace, one from the Ottonian period, a Byzantine monastery and the Caliphal court of the ʿAbbāsids seem to have many things in common. The most obvious is that they are places which at some time had a physical reality, an architectural structure, a moment of material construction – also, in many cases, of destruction – and specialized offices and people. But if the definition accepted by the contributors to this volume is that these institutions denote not only a type of tangible entity but also an activity, and that they produce or participate in machinery to order, stabilize and regulate behaviour, transcending local and temporal contexts (see Gadi Algazi's discussion, above), what identifies them and gives them their explanatory power is that they are all institutions. And if these institutions are seen not in the abstract but as pathways for understanding more complex configurations, then when, why, how, and under what conditions the specific places of power became the focus of the processes of institutionalization are key questions for the comparison of, among other things, forms of government, levels of intensity of power, and processes of legitimation.

As buildings with a physical and material presence, these places have been studied either as a manifestation of luxury and the exclusivity of the elites that inhabited them, or as the seat of their own artistic and literary culture. Palaces were the scaffolding of court society, analysed – on the basis of the work of Norbert Elias – as the sociological *locus* of interaction between monarchs and their courtiers, and a key point in the political culture of the modern age. Monasteries were structural elements of space and have been studied in their territorial insertion. All these places were, however, more than that. They were specific sites where authority was personified and displayed, and were key elements in the institutionality of power. Whether they were ninth-century Carolingian palaces re-used in the tenth, or those built by the ʿAbbāsid caliphs in Baghdad or Samarra, the complex raised in Constantinople or the monasteries born in the lands of Byzantium, they were active elements of the topography of power. In the case of the palaces, their presence was distinctive, and highlighted by their location and the scale of the surrounding buildings. The spectacular concentration of power and wealth represented by their existence was reflected not only in architectural splendour but also in the precious

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objects they housed: relics or images which, while now mostly disappeared, have left a lasting mark in mediaeval texts such as the account in the 820s of the paintings of rulers from Cyrus through to Charlemagne, Constantine building Constantinople included, of the Carolingian palace at Ingelheim.

Although they existed in real and contingent settings, in order to be fully realized the palaces needed a pre-existing control apparatus and the accumulation of power and resources. Their institution-building process was mainly *post facto*, by way of complex narrative elaborations formalizing diverse disorganized practices, and composing a discourse of continuity, permanence and impersonality: all of these are fundamental elements in the definition of institutions. The specialization of palace offices and their officials, and their continuity of posts (for example, families affiliated at court in Baghdad for several generations) reinforced the idea of transpersonal and permanent institutions.

Palatium was not an objective term describing a royal site, but an attribute of the political importance of a residence, of its central position, at a specific point in time. It is thus a useful tool for measuring political change. Carolingian palaces still existed and were important in post-Carolingian Europe, still in the same place, while the world changed around them. The appearance of continuity, however, cannot hide the break between political tradition and political geography between the ninth and tenth centuries. The main sites of the Carolingians were no longer in the central places that the post-Carolingians were able to control. In the ninth century, the kings ruled from the central core of the royal domains, and fought for control of the peripheries of the kingdom; in the tenth the dynamic was reversed, and the new rulers established on the edges of the old kingdoms had to compete to control the Carolingian heartlands. The new dynasties could not simply inherit the Carolingian resources in these lands, because the notion of crown property was itself not clearly institutionalised. On the contrary, they needed to strengthen the perception and symbolic power of the palaces, confirming that, while they were on the periphery of royal power, they were inherently regal and should therefore be associated with the king.

The example of Aachen allows us to expand on the idea of continuity, understanding it as the arena of the conflict that was raging during this period of political change. As to the idea of the continuity of the palace between its use as a residence by Charlemagne and its reactivation by Otto III, narrative sources show that when its political centrality declined and it was practically destroyed by the Viking invasions (881), its status as a symbol of political order grew. Although it was no longer the seat of power, and the kings had not visited it for decades, the families who competed to take over the notion of Carolingian royalty turned it into a powerful instrument of legitimation. The imaginary

Aachen which chroniclers such as Notker brought to life was a powerful symbol in spite of, or perhaps because of, the fact that it was no longer a living seat of power. As Simon MacLean shows, in the decades around the year 900 Aachen was at the same time central (symbolically) and peripheral (practically).

Permanence and impersonality, also basic institutional elements, are seen in the fact that, as a common feature in the different areas under study, the palaces maintained the royal power even in the absence of the sovereign. Comparison among them, however, gives us some indications of their differing political configurations. Some palaces in the post-Carolingian and Ottonian period were in the hands of nobles, since the polycentric, itinerant and absentee nature of the government made it impossible for the kings to keep total control over them. Aachen was a place of competition, a disputed legacy. The post-Carolingian kings, belonging to rival dynasties, only controlled it when they were actually there, unlike their predecessors in the ninth century. In turn, the collective character of the Ottonian political culture becomes clear in the fact that when the monarchs were absent, for example in Italy, the noblemen continued to meet in the palace to hear the letters sent by the king, or to choose a new king, as happened on the death of Otto III in 1002. From this point of view, these palaces appear as a network of diffuse power rather than as a vehicle that carries power from a single source. The differences between East and West in terms of the levels of intensity of state power are manifest in the exclusiveness of the palaces. In the tenth century Western governors were able to capture and damage palatial residences, but that did not mean that they had gained complete control over their enemies or their opposition. In Byzantium, the palace was usually the key battleground and the trophy to be won in the struggles for imperial power.

The palace built by the ʿAbbāsids in Baghdad attained such great symbolic importance – "it was the crown of Baghdad (…) and one of the great achievements of the ʿAbbāsids" – that its fall foretold the collapse of the dynasty. In fact, although the mosques were the first elements to identify the symbolic system of the Muslim imperial organization, the institutionalization of the palace and of court ceremonial was linked to the foundation of Baghdad in the mid-second/eighth century and to its establishment as the capital of the ʿAbbāsids. When the ʿAbbāsid capital was transferred to Samarra in the first decades of the third/ninth century, a new palace paradigm – in the words of Nadia El Cheikh – was created: in it, the royal palace was conceived in a form hitherto unknown in Islam, as something hidden, secluded and self-sufficient. The caliphs set themselves apart from the people, and the staging of their appearances became more and more theatrical. The distancing of royalty was

the key to achieving veneration and obedience, and the structure of the palace reflected the political culture of the ʿAbbāsid caliphate. Palaces were thus a necessary step in the institutionalization of court ceremonial, and came to form part of a symbolic system, representing the relationship between power and government in a stable material form. The ceremonial was institutionalized and was, in its turn, a way of creating differences and establishing boundaries both among social groups and between individuals.

In the days of al-Muqtadir the caliphal residence was like a small city, where a long road through gardens, courtyards, gates and antechambers led to the caliph. By that time, the caliphs had practically completed the process of estrangement of their subjects, both architecturally and ceremonially, a process accentuated by the fact that the administrative and political centres were physically separated from the urban centres. The famous description of the reception of the Byzantine ambassadors in Baghdad in 305/917 links the architectural structure with the ceremonial *mise en scène*. The ambassadors had to wait two months and pass through twenty-three different palaces before they could come – via labyrinths and passages, connected together in secret and mysterious ways – into the presence of al-Muqtadir, concealed behind a curtain. The passing from room to room emphasized the notion of the isolation and separation of the prince, and served to establish a narrative about the concentration of power in one place, the palace, and the meticulous control of the caliph over that space in particular and, by extension, over the whole empire.

Access to the palaces was a combination of architectural structures and spatial designs, but it was above all the product of the decisions of the governors. The great gate of Constantinople, the Chalke, was a point of contact as well as a frontier between the city and the imperial palace. Carolingian palaces were more open and porous than those of Byzantium or Islam. Some key locations such as Aachen were not fortified, and the urban community and the palace could have a direct relationship by means of the church built by Charlemagne, which was not a palace chapel but the baptismal church of the local community. However, as Stuart Airlie and Simon MacLean have stressed, audiences with the Carolingian kings were formal affairs, which petitioners approached gradually, passing through various intermediaries and filters which contributed to the expression of the distance and separation of power. All these elements – distinctive aspects of entering the palace, rules of conduct, routines, hierarchy of places – were particularly striking when foreign visitors arrived at the palaces. In the ambassadorial visit of John of Gorze to tenth-century Cordoba, but also in those of the Byzantines and ʿAbbāsids laden with gifts to the court of Charlemagne in Aachen in the ninth century, the palace was not merely a backdrop, but played an active role in the drama. In each of them,

Eastern and Western, the permeability of each of the rooms making up a palace complex had a social significance: changes in permeability were evidence of shifts in the social arrangements.

The type of approach of the articles in this section has made it possible to show clear differences in specific historical contexts and landscapes and in the institutionalization of the places where power and royal authority rested. Such differences can be seen in the role of the women of the families of rulers: the active participation of mothers and wives in Byzantine ceremonial on one hand, their total absence in the court of the ʿAbbāsid Caliphate in the other, or the role of the queens in the post-Carolingian period as possessors of the palaces. They can also be seen in the level of relationships with the outside world: the link between the Imperial Palace, Hagia Sophia and the Hippodrome in Constantinople contrasts with the separateness of the caliph in Samarra; it also contrasts the expression of the Christian community in the baptismal metaphor of Aachen. Another point of comparison could be the correspondence between the complexity of the palace systems and the wealth of the elites. The differences can also be tracked in the construction of ceremonial space, limited to the palace in Baghdad, openly processional between the palace and Hagia Sophia in Byzantium; in the greater or lesser need to assert dynastic legitimacy by appropriating the palaces of their predecessors, as in post-Carolingian Europe or Byzantium; in the *ex novo* construction characteristic of the Islamic world; or in the links with burial sites connected with royal residences and monasteries.

The tensions arising in the course of the process of institutionalization of the places representing power and authority in Western Christianity, Byzantium, and Islam in the early centuries of the Middle Ages were manifested in different ways. Tracing contemporary perceptions of the palace, we see a world in which the symbols of political order survived in the transition between the Carolingian and post-Carolingian worlds, not merely as a passive adaptation of Carolingian traditions, but as a part of an active struggle to instrumentalize the past in the interest of immediate political objectives. The new dynasties needed the permanence of the palaces, because they themselves were in continuous movement; and because, given that many of these places were now out of their control, they always had to appropriate the "royalty" – the "palace-ness" – of those palaces so that they could continue to maintain their importance in the geography of the kingdom.

Like the Carolingian *palatium*, the official ʿAbbāsid palace was much more than a building: it was an expression of power, whose structural and architectural development reflected the evolution of the state and certain related institutions, such as court ceremonial. Texts issuing from the Caliph's court

created a political culture, based on the palatine practices and the texts that contained the ceremonial, shaping the lasting images of the ʿAbbāsid Empire and its existence through the places that they possessed. However, these texts show that the institutionalization of ceremonial was gradual. Despite the fact that towards the tenth century it became one of the hallmarks of dynastic government in the Islamic world, the tension between the pious ideal of early Islam and the ostentation and prestige of ceremonial was still clearly visible in ceremonies such as the prostration before the caliph, borrowed from Byzantine ceremonial, which reflected a conflict but also efforts at adjustment, adaptation, and accommodation. The monastic experience in Byzantium is illuminating: monasticism born in part as a reaction against the institutionalisation of the Church and from this origin, monks retained a contesting attitude when faced with imperial and ecclesiastical institutions throughout a large part of Byzantine history. However, this was altered with monasticism's very evolution, its growing standing due notably to the monks' presence on the land, in towns and in the countryside. As shown by Michel Kaplan, subsequent hagiography has rewritten the history of monastic institutionalisation in Constantinople, as it was the seat of a political power that could not tolerate disorder and has imposed upon it order an institutional framework, concealing the gyrovague monks who populated Constantinople's streets, whether isolated or in little groups, and who inflamed the crowds through their theological quarrels.

Persistent *topoi* in the traditions of both East and West, such as that of the rusticity and mobility of the Umayyads and the Merovingians compared to the civility and stability of the ʿAbbāsids and Carolingians, builders and owners of the palaces and the creators of their ceremonial, reflect these tensions in the building of the institutions. They also show a fact repeatedly stated and confirmed in the articles in this section: that places of power like palaces, in the words of Stuart Airlie, served just one lord, but also served different purposes. And these purposes were expressed in writings – chronicles, ceremonials, as well as monastic constitutions – and gave shape *post facto* to the institution through the production of complex narratives to give new meanings to past realities.

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